

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2830
OFFERED BY MR. BOEHNER OF OHIO**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Pension Protection Act of 2005”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title and table of contents.

**TITLE I—REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER
DEFINED BENEFIT PENSION PLANS**

Subtitle A—Amendments to Employee Retirement Income Security Act of
1974

Sec. 101. Minimum funding standards.
Sec. 102. Funding rules for single-employer defined benefit pension plans.
Sec. 103. Benefit limitations under single-employer plans.
Sec. 104. Technical and conforming amendments.

Subtitle B—Amendments to Internal Revenue Code of 1986

[*See introduced bill, page 71, line 1 through page 140, line 13*].

Subtitle C—Other provisions

Sec. 121. Modification of transition rule to pension funding requirements.
Sec. 122. Treatment of nonqualified deferred compensation plans when em-
ployer defined benefit plan in at-risk status [*See introduced
bill, page 142, line 3 through page 143, line 16*].

**TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED
BENEFIT PLANS**

Subtitle A—Amendments to Employee Retirement Income Security Act of
1974

2

- Sec. 201. Funding rules for multiemployer defined benefit plans.
- Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status.
- Sec. 203. Measures to forestall insolvency of multiemployer plans.
- Sec. 204. Withdrawal liability reforms.
- Sec. 205. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability.

Subtitle B—Amendments to Internal Revenue Code of 1986

[See introduced bill, page 200, line 8 through page 251, line 15].

TITLE III—OTHER PROVISIONS

- Sec. 301. Interest rate assumption for determination of lump sum distributions.
- Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions *[See introduced bill, page 254, line 6 through page 255, line 7].*
- Sec. 303. Distributions during working retirement.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

- Sec. 401. Increases in PBGC premiums.

TITLE V—DISCLOSURE

- Sec. 501. Defined benefit plan funding notices.
- Sec. 502. Additional disclosure requirements.
- Sec. 503. Section 4010 filings with the PBGC.

TITLE VI—INVESTMENT ADVICE

- Sec. 601. Amendments to Employee Retirement Income Security Act of 1974 providing prohibited transaction exemption for provision of investment advice.
- Sec. 602. Amendments to Internal Revenue Code of 1986 providing prohibited transaction exemption for provision of investment advice *[See introduced bill, page 287, line 15 through page 298, line 23].*

TITLE VII—BENEFIT ACCRUAL STANDARDS

- Sec. 701. Improvements in benefit accrual standards.

TITLE VIII—DEDUCTION LIMITATIONS

[See introduced bill, page 299, line 1 through page 305, line 20].

1 **TITLE I—REFORM OF FUNDING**
2 **RULES FOR SINGLE-EM-**
3 **PLOYER DEFINED BENEFIT**
4 **PENSION PLANS**

5 **Subtitle A—Amendments to Em-**
6 **ployee Retirement Income Secu-**
7 **rity Act of 1974**

8 **SEC. 101. MINIMUM FUNDING STANDARDS.**

9 (a) REPEAL OF EXISTING FUNDING RULES.—Sec-
10 tions 302 through 308 of the Employee Retirement In-
11 come Security Act of 1974 (29 U.S.C. 1082 through
12 1086) are repealed.

13 (b) NEW MINIMUM FUNDING STANDARDS.—Part 3
14 of subtitle B of title I of such Act (as amended by sub-
15 section (a)) is amended further by inserting after section
16 301 the following new section:

17 “MINIMUM FUNDING STANDARDS

18 “SEC. 302. (a) REQUIREMENT TO MEET MINIMUM
19 FUNDING STANDARD.—

20 “(1) IN GENERAL.—A plan to which this part
21 applies shall satisfy the minimum funding standard
22 applicable to the plan for any plan year.

23 “(2) MINIMUM FUNDING STANDARD.—For pur-
24 poses of paragraph (1), a plan shall be treated as

1 satisfying the minimum funding standard for a plan
2 year if—

3 “(A) in the case of a defined benefit plan
4 which is a single-employer plan, the employer
5 makes contributions to or under the plan for
6 the plan year which, in the aggregate, are not
7 less than the minimum required contribution
8 determined under section 303 for the plan for
9 the plan year,

10 “(B) in the case of a money purchase plan
11 which is a single-employer plan, the employer
12 makes contributions to or under the plan for
13 the plan year which are required under the
14 terms of the plan, and

15 “(C) in the case of a multiemployer plan,
16 the employers make contributions to or under
17 the plan for any plan year which, in the aggregate,
18 are sufficient to ensure that the plan does
19 not have an accumulated funding deficiency
20 under section 304 as of the end of the plan
21 year.

22 “(b) LIABILITY FOR CONTRIBUTIONS.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), the amount of any contribution required
25 by this section (including any required installments

1 under paragraphs (3) and (4) of section 303(j))
2 shall be paid by the employer responsible for making
3 contributions to or under the plan.

4 “(2) JOINT AND SEVERAL LIABILITY WHERE
5 EMPLOYER MEMBER OF CONTROLLED GROUP.—In
6 the case of a single-employer plan, if the employer
7 referred to in paragraph (1) is a member of a con-
8 trolled group, each member of such group shall be
9 jointly and severally liable for payment of such con-
10 tributions.

11 “(c) VARIANCE FROM MINIMUM FUNDING STAND-
12 ARDS.—

13 “(1) WAIVER IN CASE OF BUSINESS HARD-
14 SHIP.—

15 “(A) IN GENERAL.—If—

16 “(i) an employer is (or in the case of
17 a multiemployer plan, 10 percent or more
18 of the number of employers contributing to
19 or under the plan is) unable to satisfy the
20 minimum funding standard for a plan year
21 without temporary substantial business
22 hardship (substantial business hardship in
23 the case of a multiemployer plan), and

1 “(ii) application of the standard would
2 be adverse to the interests of plan partici-
3 pants in the aggregate,
4 the Secretary of the Treasury may, subject to
5 subparagraph (C), waive the requirements of
6 subsection (a) for such year with respect to all
7 or any portion of the minimum funding stand-
8 ard. The Secretary of the Treasury shall not
9 waive the minimum funding standard with re-
10 spect to a plan for more than 3 of any 15 (5
11 of any 15 in the case of a multiemployer plan)
12 consecutive plan years.

13 “(B) EFFECTS OF WAIVER.—If a waiver is
14 granted under subparagraph (A) for any plan
15 year—

16 “(i) in the case of a single-employer
17 plan, the minimum required contribution
18 under section 303 for the plan year shall
19 be reduced by the amount of the waived
20 funding deficiency and such amount shall
21 be amortized as required under section
22 303(e), and

23 “(ii) in the case of a multiemployer
24 plan, the funding standard account shall
25 be credited under section 304(b)(3)(C)

1 with the amount of the waived funding de-
2 ficiency and such amount shall be amor-
3 tized as required under section
4 304(b)(2)(C).

5 “(C) WAIVER OF AMORTIZED PORTION
6 NOT ALLOWED.—The Secretary of the Treasury
7 may not waive under subparagraph (A) any
8 portion of the minimum funding standard
9 under subsection (a) for a plan year which is
10 attributable to any waived funding deficiency
11 for any preceding plan year.

12 “(2) DETERMINATION OF BUSINESS HARD-
13 SHIP.—For purposes of this subsection, the factors
14 taken into account in determining temporary sub-
15 stantial business hardship (substantial business
16 hardship in the case of a multiemployer plan) shall
17 include (but shall not be limited to) whether or
18 not—

19 “(A) the employer is operating at an eco-
20 nomic loss,

21 “(B) there is substantial unemployment or
22 underemployment in the trade or business and
23 in the industry concerned,

24 “(C) the sales and profits of the industry
25 concerned are depressed or declining, and

1 “(D) it is reasonable to expect that the
2 plan will be continued only if the waiver is
3 granted.

4 “(3) WAIVED FUNDING DEFICIENCY.—For pur-
5 poses of this part, the term ‘waived funding defi-
6 ciency’ means the portion of the minimum funding
7 standard under subsection (a) (determined without
8 regard to the waiver) for a plan year waived by the
9 Secretary of the Treasury and not satisfied by em-
10 ployer contributions.

11 “(4) SECURITY FOR WAIVERS FOR SINGLE-EM-
12 PLOYER PLANS, CONSULTATIONS.—

13 “(A) SECURITY MAY BE REQUIRED.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in subparagraph (C), the Secretary
16 of the Treasury may require an employer
17 maintaining a defined benefit plan which is
18 a single-employer plan (within the meaning
19 of section 4001(a)(15)) to provide security
20 to such plan as a condition for granting or
21 modifying a waiver under paragraph (1).

22 “(ii) SPECIAL RULES.—Any security
23 provided under clause (i) may be perfected
24 and enforced only by the Pension Benefit
25 Guaranty Corporation, or at the direction

1 of the Corporation, by a contributing spon-
2 sor (within the meaning of section
3 4001(a)(13)), or a member of such spon-
4 sor's controlled group (within the meaning
5 of section 4001(a)(14)).

6 “(B) CONSULTATION WITH THE PENSION
7 BENEFIT GUARANTY CORPORATION.—Except as
8 provided in subparagraph (C), the Secretary of
9 the Treasury shall, before granting or modi-
10 fying a waiver under this subsection with re-
11 spect to a plan described in subparagraph
12 (A)(i)—

13 “(i) provide the Pension Benefit
14 Guaranty Corporation with—

15 “(I) notice of the completed ap-
16 plication for any waiver or modifica-
17 tion, and

18 “(II) an opportunity to comment
19 on such application within 30 days
20 after receipt of such notice, and

21 “(ii) consider—

22 “(I) any comments of the Cor-
23 poration under clause (i)(II), and

24 “(II) any views of any employee
25 organization (within the meaning of

1 section 3(4)) representing participants
2 in the plan which are submitted in
3 writing to the Secretary of the Treas-
4 ury in connection with such applica-
5 tion.

6 Information provided to the Corporation under
7 this subparagraph shall be considered tax re-
8 turn information and subject to the safe-
9 guarding and reporting requirements of section
10 6103(p) of the Internal Revenue Code of 1986.

11 “(C) EXCEPTION FOR CERTAIN WAIV-
12 ERS.—

13 “(i) IN GENERAL.—The preceding
14 provisions of this paragraph shall not
15 apply to any plan with respect to which the
16 sum of—

17 “(I) the aggregate unpaid min-
18 imum required contribution for the
19 plan year and all preceding plan
20 years, and

21 “(II) the present value of all
22 waiver amortization installments de-
23 termined for the plan year and suc-
24 ceeding plan years under section
25 303(e)(2),

1 is less than \$1,000,000.

2 “(ii) TREATMENT OF WAIVERS FOR
3 WHICH APPLICATIONS ARE PENDING.—The
4 amount described in clause (i)(I) shall in-
5 clude any increase in such amount which
6 would result if all applications for waivers
7 of the minimum funding standard under
8 this subsection which are pending with re-
9 spect to such plan were denied.

10 “(iii) UNPAID MINIMUM REQUIRED
11 CONTRIBUTION.—For purposes of this
12 subparagraph—

13 “(I) IN GENERAL.—The term
14 ‘unpaid minimum required contribu-
15 tion’ means, with respect to any plan
16 year, any minimum required contribu-
17 tion under section 303 for the plan
18 year which is not paid on or before
19 the due date (as determined under
20 section 303(j)(1)) for the plan year.

21 “(II) ORDERING RULE.—For
22 purposes of subclause (I), any pay-
23 ment to or under a plan for any plan
24 year shall be allocated first to unpaid
25 minimum required contributions for

1 all preceding plan years on a first-in,
2 first-out basis and then to the min-
3 imum required contribution under sec-
4 tion 303 for the plan year.

5 “(5) SPECIAL RULES FOR SINGLE-EMPLOYER
6 PLANS.—

7 “(A) APPLICATION MUST BE SUBMITTED
8 BEFORE DATE 2½ MONTHS AFTER CLOSE OF
9 YEAR.—In the case of a single-employer plan,
10 no waiver may be granted under this subsection
11 with respect to any plan for any plan year un-
12 less an application therefor is submitted to the
13 Secretary of the Treasury not later than the
14 15th day of the 3rd month beginning after the
15 close of such plan year.

16 “(B) SPECIAL RULE IF EMPLOYER IS MEM-
17 BER OF CONTROLLED GROUP.—In the case of a
18 single-employer plan, if an employer is a mem-
19 ber of a controlled group, the temporary sub-
20 stantial business hardship requirements of
21 paragraph (1) shall be treated as met only if
22 such requirements are met—

23 “(i) with respect to such employer,
24 and

1 “(ii) with respect to the controlled
2 group of which such employer is a member
3 (determined by treating all members of
4 such group as a single employer).

5 The Secretary of the Treasury may provide that
6 an analysis of a trade or business or industry
7 of a member need not be conducted if the Sec-
8 retary of the Treasury determines such analysis
9 is not necessary because the taking into account
10 of such member would not significantly affect
11 the determination under this paragraph.

12 “(6) ADVANCE NOTICE.—

13 “(A) IN GENERAL.—The Secretary of the
14 Treasury shall, before granting a waiver under
15 this subsection, require each applicant to pro-
16 vide evidence satisfactory to such Secretary that
17 the applicant has provided notice of the filing of
18 the application for such waiver to each affected
19 party (as defined in section 4001(a)(21)). Such
20 notice shall include a description of the extent
21 to which the plan is funded for benefits which
22 are guaranteed under title IV and for benefit li-
23 abilities.

24 “(B) CONSIDERATION OF RELEVANT IN-
25 FORMATION.—The Secretary of the Treasury

1 shall consider any relevant information provided
2 by a person to whom notice was given under
3 subparagraph (A).

4 “(7) RESTRICTION ON PLAN AMENDMENTS.—

5 “(A) IN GENERAL.—No amendment of a
6 plan which increases the liabilities of the plan
7 by reason of any increase in benefits, any
8 change in the accrual of benefits, or any change
9 in the rate at which benefits become nonforfeit-
10 able under the plan shall be adopted if a waiver
11 under this subsection or an extension of time
12 under section 304(d) is in effect with respect to
13 the plan, or if a plan amendment described in
14 subsection (d)(2) has been made at any time in
15 the preceding 24 months. If a plan is amended
16 in violation of the preceding sentence, any such
17 waiver, or extension of time, shall not apply to
18 any plan year ending on or after the date on
19 which such amendment is adopted.

20 “(B) EXCEPTION.—Paragraph (1) shall
21 not apply to any plan amendment which—

22 “(i) the Secretary of the Treasury de-
23 termines to be reasonable and which pro-
24 vides for only de minimis increases in the
25 liabilities of the plan,

1 “(ii) only repeals an amendment de-
2 scribed in subsection (d)(2), or

3 “(iii) is required as a condition of
4 qualification under part I of subchapter D,
5 of chapter 1 of the Internal Revenue Code
6 of 1986.

7 “(8) CROSS REFERENCE.—For corresponding
8 duties of the Secretary of the Treasury with regard
9 to implementation of the Internal Revenue Code of
10 1986, see section 412(e) of such Code.

11 “(d) MISCELLANEOUS RULES.—

12 “(1) CHANGE IN METHOD OR YEAR.—If the
13 funding method, the valuation date, or a plan year
14 for a plan is changed, the change shall take effect
15 only if approved by the Secretary of the Treasury.

16 “(2) CERTAIN RETROACTIVE PLAN AMEND-
17 MENTS.—For purposes of this section, any amend-
18 ment applying to a plan year which—

19 “(A) is adopted after the close of such plan
20 year but no later than 2½ months after the
21 close of the plan year (or, in the case of a mul-
22 tiemployer plan, no later than 2 years after the
23 close of such plan year),

24 “(B) does not reduce the accrued benefit
25 of any participant determined as of the begin-

1 ning of the first plan year to which the amend-
2 ment applies, and

3 “(C) does not reduce the accrued benefit of
4 any participant determined as of the time of
5 adoption except to the extent required by the
6 circumstances,

7 shall, at the election of the plan administrator, be
8 deemed to have been made on the first day of such
9 plan year. No amendment described in this para-
10 graph which reduces the accrued benefits of any par-
11 ticipant shall take effect unless the plan adminis-
12 trator files a notice with the Secretary of the Treas-
13 ury notifying him of such amendment and such Sec-
14 retary has approved such amendment, or within 90
15 days after the date on which such notice was filed,
16 failed to disapprove such amendment. No amend-
17 ment described in this subsection shall be approved
18 by the Secretary of the Treasury unless such Sec-
19 retary determines that such amendment is necessary
20 because of a substantial business hardship (as deter-
21 mined under subsection (c)(2)) and that a waiver
22 under subsection (c) (or, in the case of a multiem-
23 ployer plan, any extension of the amortization period
24 under section 304(d)) is unavailable or inadequate.

1 “(1) in any case in which the value of plan as-
2 sets of the plan (as reduced under subsection (f)(4))
3 is less than the funding target of the plan for the
4 plan year, the sum of—

5 “(A) the target normal cost of the plan for
6 the plan year,

7 “(B) the shortfall amortization charge (if
8 any) for the plan for the plan year determined
9 under subsection (c), and

10 “(C) the waiver amortization charge (if
11 any) for the plan for the plan year as deter-
12 mined under subsection (e);

13 “(2) in any case in which the value of plan as-
14 sets of the plan (as reduced under subsection (f)(4))
15 exceeds the funding target of the plan for the plan
16 year, the target normal cost of the plan for the plan
17 year reduced by such excess; or

18 “(3) in any other case, the target normal cost
19 of the plan for the plan year.

20 “(b) TARGET NORMAL COST.—For purposes of this
21 section, except as provided in subsection (i)(2) with re-
22 spect to plans in at-risk status, the term ‘target normal
23 cost’ means, for any plan year, the present value of all
24 benefits which are expected to accrue or to be earned
25 under the plan during the plan year. For purposes of this

1 subsection, if any benefit attributable to services per-
2 formed in a preceding plan year is increased by reason
3 of any increase in compensation during the current plan
4 year, the increase in such benefit shall be treated as hav-
5 ing accrued during the current plan year.

6 “(c) SHORTFALL AMORTIZATION CHARGE.—

7 “(1) IN GENERAL.—For purposes of this sec-
8 tion, the shortfall amortization charge for a plan for
9 any plan year is the aggregate total of the shortfall
10 amortization installments for such plan year with re-
11 spect to the shortfall amortization bases for such
12 plan year and each of the 6 preceding plan years.

13 “(2) SHORTFALL AMORTIZATION INSTALL-
14 MENT.—The plan sponsor shall determine, with re-
15 spect to the shortfall amortization base of the plan
16 for any plan year, the amounts necessary to amor-
17 tize such shortfall amortization base, in level annual
18 installments over a period of 7 plan years beginning
19 with such plan year. For purposes of paragraph (1),
20 the annual installment of such amortization for each
21 plan year in such 7-plan-year period is the shortfall
22 amortization installment for such plan year with re-
23 spect to such shortfall amortization base. In deter-
24 mining any shortfall amortization installment under
25 this paragraph, the plan sponsor shall use the seg-

1 ment rates determined under subparagraph (C) of
2 subsection (h)(2), applied under rules similar to the
3 rules of subparagraph (B) of subsection (h)(2).

4 “(3) SHORTFALL AMORTIZATION BASE.—For
5 purposes of this section, the shortfall amortization
6 base of a plan for a plan year is the excess (if any)
7 of—

8 “(A) the funding shortfall of such plan for
9 such plan year, over

10 “(B) the sum of—

11 “(i) the present value (determined
12 using the segment rates determined under
13 subparagraph (C) of subsection (h)(2), ap-
14 plied under rules similar to the rules of
15 subparagraph (B) of subsection (h)(2)) of
16 the aggregate total of the shortfall amorti-
17 zation installments, for such plan year and
18 the 5 succeeding plan years, which have
19 been determined with respect to the short-
20 fall amortization bases of the plan for each
21 of the 6 plan years preceding such plan
22 year, and

23 “(ii) the present value (as so deter-
24 mined) of the aggregate total of the waiver
25 amortization installments for such plan

1 year and the 5 succeeding plan years,
2 which have been determined with respect
3 to the waiver amortization bases of the
4 plan for each of the 5 plan years preceding
5 such plan year.

6 In any case in which the value of plan assets
7 of the plan (as reduced under subsection (f)(4))
8 is equal to or greater than the funding target
9 of the plan for the plan year, the shortfall am-
10 ortization base of the plan for such plan year
11 shall be zero.

12 “(4) FUNDING SHORTFALL.—

13 “(A) IN GENERAL.—For purposes of this
14 section, except as provided in subparagraph
15 (B), the funding shortfall of a plan for any plan
16 year is the excess (if any) of—

17 “(i) the funding target of the plan for
18 the plan year, over

19 “(ii) the value of plan assets of the
20 plan (as reduced under subsection (f)(4))
21 for the plan year which are held by the
22 plan on the valuation date.

23 “(B) TRANSITION RULE.—For purposes of
24 paragraph (3), in the case of a plan to which
25 section 302(d) of this Act (as in effect on the

1 day before the date of the enactment of the
 2 Pension Protection Act of 2005) applied for the
 3 plan year beginning in 2005, subparagraph (A)
 4 shall be applied to plan years beginning after
 5 2005 and before 2010 by substituting for the
 6 amount described in subparagraph (A)(i) the
 7 applicable percentage of the funding target of
 8 the plan for the plan year determined under the
 9 following table:

“In the case of a plan year beginning in calendar year:	The appli- cable per- centage is:
2006	92 percent
2007	94 percent
2008	96 percent
2009	98 percent.

10 “(5) EARLY DEEMED AMORTIZATION UPON AT-
 11 TAINMENT OF FUNDING TARGET.—In any case in
 12 which the funding shortfall of a plan for a plan year
 13 is zero, for purposes of determining the shortfall am-
 14 ortization charge for such plan year and succeeding
 15 plan years, the shortfall amortization bases for all
 16 preceding plan years (and all shortfall amortization
 17 installments determined with respect to such bases)
 18 shall be reduced to zero.

19 “(d) RULES RELATING TO FUNDING TARGET.—For
 20 purposes of this section—

1 “(1) FUNDING TARGET.—Except as provided in
2 subsection (i)(1) with respect to plans in at-risk sta-
3 tus, the funding target of a plan for a plan year is
4 the present value of all liabilities to participants and
5 their beneficiaries under the plan for the plan year.

6 “(2) FUNDING TARGET ATTAINMENT PERCENT-
7 AGE.—The ‘funding target attainment percentage’ of
8 a plan for a plan year is the ratio (expressed as a
9 percentage) which—

10 “(A) the value of plan assets for the plan
11 year (as reduced under subsection (f)(4)), bears
12 to

13 “(B) the funding target of the plan for the
14 plan year (determined without regard to sub-
15 section (i)(1)).

16 “(e) WAIVER AMORTIZATION CHARGE.—

17 “(1) DETERMINATION OF WAIVER AMORTIZA-
18 TION CHARGE.—The waiver amortization charge (if
19 any) for a plan for any plan year is the aggregate
20 total of the waiver amortization installments for
21 such plan year with respect to the waiver amortiza-
22 tion bases for each of the 5 preceding plan years.

23 “(2) WAIVER AMORTIZATION INSTALLMENT.—
24 The plan sponsor shall determine, with respect to
25 the waiver amortization base of the plan for any

1 plan year, the amounts necessary to amortize such
2 waiver amortization base, in level annual install-
3 ments over a period of 5 plan years beginning with
4 the succeeding plan year. For purposes of paragraph
5 (1), the annual installment of such amortization for
6 each plan year in such 5-plan year period is the
7 waiver amortization installment for such plan year
8 with respect to such waiver amortization base.

9 “(3) INTEREST RATE.—In determining any
10 waiver amortization installment under this sub-
11 section, the plan sponsor shall use the segment rates
12 determined under subparagraph (C) of subsection
13 (h)(2), applied under rules similar to the rules of
14 subparagraph (B) of subsection (h)(2).

15 “(4) WAIVER AMORTIZATION BASE.—The waiv-
16 er amortization base of a plan for a plan year is the
17 amount of the waived funding deficiency (if any) for
18 such plan year under section 302(c).

19 “(5) EARLY DEEMED AMORTIZATION UPON AT-
20 TAINMENT OF FUNDING TARGET.—In any case in
21 which the funding shortfall of a plan for a plan year
22 is zero, for purposes of determining the waiver am-
23 ortization charge for such plan year and succeeding
24 plan years, the waiver amortization base for all pre-
25 ceding plan years shall be reduced to zero.

1 “(f) REDUCTION OF MINIMUM REQUIRED CONTRIBU-
2 TION BY PRE-FUNDING BALANCE AND FUNDING STAND-
3 ARD CARRYOVER BALANCE.—

4 “(1) ELECTION TO MAINTAIN BALANCES.—

5 “(A) PRE-FUNDING BALANCE.—The plan
6 sponsor of a single-employer plan may elect to
7 maintain a pre-funding balance.

8 “(B) FUNDING STANDARD CARRYOVER
9 BALANCE.—

10 “(i) IN GENERAL.—In the case of a
11 single-employer plan described in clause
12 (ii), the plan sponsor may elect to maintain
13 a funding standard carryover balance, until
14 such balance is reduced to zero.

15 “(ii) PLANS MAINTAINING FUNDING
16 STANDARD ACCOUNT IN 2005.—A plan is
17 described in this clause if the plan—

18 “(I) was in effect for a plan year
19 beginning in 2005, and

20 “(II) had a positive balance in
21 the funding standard account under
22 section 302(b) as in effect for such
23 plan year and determined as of the
24 end of such plan year.

1 “(2) APPLICATION OF BALANCES.—A pre-fund-
2 ing balance and a funding standard carryover bal-
3 ance maintained pursuant to this paragraph—

4 “(A) shall be available for crediting against
5 the minimum required contribution, pursuant to
6 an election under paragraph (3),

7 “(B) shall be applied as a reduction in the
8 amount treated as the value of plan assets for
9 purposes of this section, to the extent provided
10 in paragraph (4), and

11 “(C) may be reduced at any time, pursu-
12 ant to an election under paragraph (5).

13 “(3) ELECTION TO APPLY BALANCES AGAINST
14 MINIMUM REQUIRED CONTRIBUTION.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraphs (B) and (C), in the case of any
17 plan year in which the plan sponsor elects to
18 credit against the minimum required contribu-
19 tion for the current plan year all or a portion
20 of the pre-funding balance or the funding
21 standard carryover balance for the current plan
22 year (not in excess of such minimum required
23 contribution), the minimum required contribu-
24 tion for the plan year shall be reduced by the
25 amount so credited by the plan sponsor. For

1 purposes of the preceding sentence, the min-
2 imum required contribution shall be determined
3 after taking into account any waiver under sec-
4 tion 302(c).

5 “(B) COORDINATION WITH FUNDING
6 STANDARD CARRYOVER BALANCE.—To the ex-
7 tent that any plan has a funding standard car-
8 rryover balance greater than zero, no amount of
9 the pre-funding balance of such plan may be
10 credited under this paragraph in reducing the
11 minimum required contribution.

12 “(C) LIMITATION FOR UNDERFUNDED
13 PLANS.—The preceding provisions of this para-
14 graph shall not apply for any plan year if the
15 ratio (expressed as a percentage) which—

16 “(i) the value of plan assets for the
17 preceding plan year (as reduced under
18 paragraph (4)), bears to

19 “(ii) the funding target of the plan for
20 the preceding plan year (determined with-
21 out regard to subsection (i)(1)),

22 is less than 80 percent.

23 “(4) EFFECT OF BALANCES ON AMOUNTS
24 TREATED AS VALUE OF PLAN ASSETS.—In the case
25 of any plan maintaining a pre-funding balance or a

1 funding standard carryover balance pursuant to this
2 subsection, the amount treated as the value of plan
3 assets shall be deemed to be such amount, reduced
4 as provided in the following subparagraphs:

5 “(A) APPLICABILITY OF SHORTFALL AM-
6 ORTIZATION CHARGE AND WAIVER AMORTIZA-
7 TION CHARGE.—For purposes of subsection
8 (c)(3), the value of plan assets is deemed to be
9 such amount, reduced by the amount of the
10 pre-funding balance, but only if an election
11 under paragraph (2) applying any portion of
12 the pre-funding balance in reducing the min-
13 imum required contribution is in effect for the
14 plan year.

15 “(B) DETERMINATION OF EXCESS ASSETS,
16 FUNDING SHORTFALL, AND FUNDING TARGET
17 ATTAINMENT PERCENTAGE.—For purposes of
18 subsections (a), (c)(4)(A)(ii), and (d)(2)(A), the
19 value of plan assets is deemed to be such
20 amount, reduced by the amount of the pre-
21 funding balance and the funding standard car-
22 ryover balance.

23 “(C) AVAILABILITY OF BALANCES IN PLAN
24 YEAR FOR CREDITING AGAINST MINIMUM RE-
25 QUIRED CONTRIBUTION.—For purposes of

1 paragraph (3)(C)(i) of this subsection, the value
2 of plan assets is deemed to be such amount, re-
3 duced by the amount of the pre-funding bal-
4 ance.

5 “(5) ELECTION TO REDUCE BALANCE PRIOR TO
6 DETERMINATIONS OF VALUE OF PLAN ASSETS AND
7 CREDITING AGAINST MINIMUM REQUIRED CONTRIBU-
8 TION.—

9 “(A) IN GENERAL.—The plan sponsor may
10 elect to reduce by any amount the balance of
11 the pre-funding balance and the funding stand-
12 ard carryover balance for any plan year (but
13 not below zero). Such reduction shall be effec-
14 tive prior to any determination of the value of
15 plan assets for such plan year under this sec-
16 tion and application of the balance in reducing
17 the minimum required contribution for such
18 plan for such plan year pursuant to an election
19 under paragraph (2).

20 “(B) COORDINATION BETWEEN PRE-FUND-
21 ING BALANCE AND FUNDING STANDARD CARRY-
22 OVER BALANCE.—To the extent that any plan
23 has a funding standard carryover balance great-
24 er than zero, no election may be made under

1 subparagraph (A) with respect to the pre-fund-
2 ing balance.

3 “(6) PRE-FUNDING BALANCE.—

4 “(A) IN GENERAL.—A pre-funding balance
5 maintained by a plan shall consist of a begin-
6 ning balance of zero, increased and decreased to
7 the extent provided in subparagraphs (B) and
8 (C), and adjusted further as provided in para-
9 graph (8).

10 “(B) INCREASES.—As of the valuation
11 date for each plan year beginning after 2006,
12 the pre-funding balance of a plan shall be in-
13 creased by the amount elected by the plan spon-
14 sor for the plan year. Such amount shall not ex-
15 ceed the excess (if any) of—

16 “(i) the aggregate total of employer
17 contributions to the plan for the preceding
18 plan year, over

19 “(ii) the minimum required contribu-
20 tion for such preceding plan year (in-
21 creased by interest on any portion of such
22 minimum required contribution remaining
23 unpaid as of the valuation date for the cur-
24 rent plan year, at the effective interest rate
25 for the plan for the preceding plan year,

1 for the period beginning with the first day
2 of such preceding plan year and ending on
3 the date that payment of such portion is
4 made).

5 “(C) DECREASES.—As of the valuation
6 date for each plan year after 2006, the pre-
7 funding balance of a plan shall be decreased
8 (but not below zero) by the sum of—

9 “(i) the amount of such balance cred-
10 ited under paragraph (2) (if any) in reduc-
11 ing the minimum required contribution of
12 the plan for the preceding plan year, and

13 “(ii) any reduction in such balance
14 elected under paragraph (5).

15 “(7) FUNDING STANDARD CARRYOVER BAL-
16 ANCE.—

17 “(A) IN GENERAL.—A funding standard
18 carryover balance maintained by a plan shall
19 consist of a beginning balance determined
20 under subparagraph (B), decreased to the ex-
21 tent provided in subparagraph (C), and ad-
22 justed further as provided in paragraph (8).

23 “(B) BEGINNING BALANCE.—The begin-
24 ning balance of the funding standard carryover

1 balance shall be the positive balance described
2 in paragraph (1)(B)(ii)(II).

3 “(C) DECREASES.—As of the valuation
4 date for each plan year after 2006, the funding
5 standard carryover balance of a plan shall be
6 decreased (but not below zero) by the sum of—

7 “(i) the amount of such balance cred-
8 ited under paragraph (2) (if any) in reduc-
9 ing the minimum required contribution of
10 the plan for the preceding plan year, and

11 “(ii) any reduction in such balance
12 elected under paragraph (5).

13 “(8) ADJUSTMENTS TO BALANCES.—In deter-
14 mining the pre-funding balance or the funding
15 standard carryover balance of a plan as of the valu-
16 ation date (before applying any increase or decrease
17 under paragraph (6) or (7)), the plan sponsor shall,
18 in accordance with regulations which shall be pre-
19 scribed by the Secretary of the Treasury, adjust
20 such balance so as to reflect the rate of net gain or
21 loss (determined, notwithstanding subsection (g)(3),
22 on the basis of fair market value) experienced by all
23 plan assets for the period beginning with the valu-
24 ation date for the preceding plan year and ending
25 with the date preceding the valuation date for the

1 current plan year, properly taking into account, in
2 accordance with such regulations, all contributions,
3 distributions, and other plan payments made during
4 such period.

5 “(9) ELECTIONS.—Elections under this sub-
6 section shall be made at such times, and in such
7 form and manner, as shall be prescribed in regula-
8 tions of the Secretary of the Treasury.

9 “(g) VALUATION OF PLAN ASSETS AND LIABIL-
10 ITIES.—

11 “(1) TIMING OF DETERMINATIONS.—Except as
12 otherwise provided under this subsection, all deter-
13 minations under this section for a plan year shall be
14 made as of the valuation date of the plan for such
15 plan year.

16 “(2) VALUATION DATE.—For purposes of this
17 section—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), the valuation date of a plan
20 for any plan year shall be the first day of the
21 plan year.

22 “(B) EXCEPTION FOR SMALL PLANS.—If,
23 on each day during the preceding plan year, a
24 plan had 500 or fewer participants, the plan
25 may designate any day during the plan year as

1 its valuation date for such plan year and suc-
2 ceeding plan years. For purposes of this sub-
3 paragraph, all defined benefit plans (other than
4 multiemployer plans) maintained by the same
5 employer (or any member of such employer's
6 controlled group) shall be treated as 1 plan, but
7 only employees of such employer or member
8 shall be taken into account.

9 “(C) APPLICATION OF CERTAIN RULES IN
10 DETERMINATION OF PLAN SIZE.—For purposes
11 of this paragraph—

12 “(i) PLANS NOT IN EXISTENCE IN
13 PRECEDING YEAR.—In the case of the first
14 plan year of any plan, subparagraph (B)
15 shall apply to such plan by taking into ac-
16 count the number of participants that the
17 plan is reasonably expected to have on
18 days during such first plan year.

19 “(ii) PREDECESSORS.—Any reference
20 in subparagraph (B) to an employer shall
21 include a reference to any predecessor of
22 such employer.

23 “(3) AUTHORIZATION OF USE OF ACTUARIAL
24 VALUE.—For purposes of this section, the value of
25 plan assets shall be determined on the basis of any

1 reasonable actuarial method of valuation which takes
2 into account fair market value and which is per-
3 mitted under regulations prescribed by the Secretary
4 of the Treasury, except that—

5 “(A) any such method providing for aver-
6 aging of fair market values may not provide for
7 averaging of such values over more than the 3
8 most recent plan years (including the current
9 plan year), and

10 “(B) any such method may not result in a
11 determination of the value of plan assets which,
12 at any time, is lower than 90 percent or greater
13 than 110 percent of the fair market value of
14 such assets at such time.

15 “(4) ACCOUNTING FOR CONTRIBUTION RE-
16 CEIPTS.—For purposes of this section—

17 “(A) CONTRIBUTIONS FOR PRIOR PLAN
18 YEARS TAKEN INTO ACCOUNT.—For purposes
19 of determining the value of plan assets for any
20 current plan year, in any case in which a con-
21 tribution properly allocable to amounts owed for
22 a preceding plan year is made on or after the
23 valuation date of the plan for such current plan
24 year, such contribution shall be taken into ac-
25 count, except that any such contribution made

1 during any such current plan year beginning
2 after 2006 shall be taken into account only in
3 an amount equal to its present value (deter-
4 mined using the effective rate of interest for the
5 plan for the preceding plan year) as of the valu-
6 ation date of the plan for such current plan
7 year.

8 “(B) CONTRIBUTIONS FOR CURRENT PLAN
9 YEAR DISREGARDED.—For purposes of deter-
10 mining the value of plan assets for any current
11 plan year, contributions which are properly allo-
12 cable to amounts owed for such plan year shall
13 not be taken into account, and, in the case of
14 any such contribution made before the valuation
15 date of the plan for such plan year, such value
16 of plan assets shall be reduced for interest on
17 such amount determined using the effective rate
18 of interest of the plan for the preceding plan
19 year for the period beginning when such pay-
20 ment was made and ending on the valuation
21 date of the plan.

22 “(5) ACCOUNTING FOR PLAN LIABILITIES.—
23 For purposes of this section—

24 “(A) LIABILITIES TAKEN INTO ACCOUNT
25 FOR CURRENT PLAN YEAR.—In determining the

1 value of liabilities under a plan for a plan year,
2 liabilities shall be taken into account to the ex-
3 tent attributable to benefits (including any early
4 retirement or similar benefit) accrued or earned
5 as of the beginning of the plan year.

6 “(B) ACCRUALS DURING CURRENT PLAN
7 YEAR DISREGARDED.—For purposes of sub-
8 paragraph (A), benefits accrued or earned dur-
9 ing such plan year shall not be taken into ac-
10 count, irrespective of whether the valuation date
11 of the plan for such plan year is later than the
12 first day of such plan year.

13 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

14 “(1) IN GENERAL.—Subject to this subsection,
15 the determination of any present value or other com-
16 putation under this section shall be made on the
17 basis of actuarial assumptions and methods—

18 “(A) each of which is reasonable (taking
19 into account the experience of the plan and rea-
20 sonable expectations), and

21 “(B) which, in combination, offer the actu-
22 ary’s best estimate of anticipated experience
23 under the plan.

24 “(2) INTEREST RATES.—

1 “(A) EFFECTIVE INTEREST RATE.—For
2 purposes of this section, the term ‘effective in-
3 terest rate’ means, with respect to any plan for
4 any plan year, the single rate of interest which,
5 if used to determine the present value of the
6 plan’s liabilities referred to in subsection (d)(1),
7 would result in an amount equal to the funding
8 target of the plan for such plan year.

9 “(B) INTEREST RATES FOR DETERMINING
10 FUNDING TARGET.—For purposes of deter-
11 mining the funding target of a plan for any
12 plan year, the interest rate used in determining
13 the present value of the liabilities of the plan
14 shall be—

15 “(i) in the case of liabilities reason-
16 ably determined to be payable during the
17 5-year period beginning on the first day of
18 the plan year, the first segment rate with
19 respect to the applicable month,

20 “(ii) in the case of liabilities reason-
21 ably determined to be payable during the
22 15-year period beginning at the end of the
23 period described in clause (i), the second
24 segment rate with respect to the applicable
25 month, and

1 “(iii) in the case of liabilities reason-
2 ably determined to be payable after the pe-
3 riod described in clause (ii), the third seg-
4 ment rate with respect to the applicable
5 month.

6 “(C) SEGMENT RATES.—For purposes of
7 this paragraph—

8 “(i) FIRST SEGMENT RATE.—The
9 term ‘first segment rate’ means, with re-
10 spect to any month, the single rate of in-
11 terest which shall be determined by the
12 Secretary of the Treasury for such month
13 on the basis of the corporate bond yield
14 curve for such month, taking into account
15 only that portion of such yield curve which
16 is based on bonds maturing during the 5-
17 year period commencing with such month.

18 “(ii) SECOND SEGMENT RATE.—The
19 term ‘second segment rate’ means, with re-
20 spect to any month, the single rate of in-
21 terest which shall be determined by the
22 Secretary of the Treasury for such month
23 on the basis of the corporate bond yield
24 curve for such month, taking into account
25 only that portion of such yield curve which

1 is based on bonds maturing during the 15-
2 year period beginning at the end of the pe-
3 riod described in clause (i).

4 “(iii) THIRD SEGMENT RATE.—The
5 term ‘third segment rate’ means, with re-
6 spect to any month, the single rate of in-
7 terest which shall be determined by the
8 Secretary of the Treasury for such month
9 on the basis of the corporate bond yield
10 curve for such month, taking into account
11 only that portion of such yield curve which
12 is based on bonds maturing during periods
13 beginning after the period described in
14 clause (ii).

15 “(D) CORPORATE BOND YIELD CURVE.—

16 For purposes of this paragraph—

17 “(i) IN GENERAL.—The term ‘cor-
18 porate bond yield curve’ means, with re-
19 spect to any month, a yield curve which is
20 prescribed by the Secretary of the Treas-
21 ury for such month and which reflects a 3-
22 year weighted average of yields on invest-
23 ment grade corporate bonds with varying
24 maturities.

1 “(ii) 3-YEAR WEIGHTED AVERAGE.—

2 The term ‘3-year weighted average’ means
3 an average determined by using a method-
4 ology under which the most recent year is
5 weighted 50 percent, the year preceding
6 such year is weighted 35 percent, and the
7 second year preceding such year is weight-
8 ed 15 percent.

9 “(E) APPLICABLE MONTH.—For purposes
10 of this paragraph, the term ‘applicable month’
11 means, with respect to any plan for any plan
12 year, the month which includes the valuation
13 date of such plan for such plan year or, at the
14 election of the plan administrator, any of the 4
15 months which precede such month. Any election
16 made under this subparagraph shall apply to
17 the plan year for which the election is made and
18 all succeeding plan years, unless the election is
19 revoked with the consent of the Secretary of the
20 Treasury.

21 “(F) PUBLICATION REQUIREMENTS.—The
22 Secretary of the Treasury shall publish for each
23 month the corporate bond yield curve (and the
24 corporate bond yield curve reflecting the modi-
25 fication described in section

1 205(g)(3)(B)(iii)(I) for such month and each
2 of the rates determined under subparagraph
3 (B) for such month. The Secretary of the
4 Treasury shall also publish a description of the
5 methodology used to determine such yield curve
6 and such rates which is sufficiently detailed to
7 enable plans to make reasonable projections re-
8 garding the yield curve and such rates for fu-
9 ture months based on the plan's projection of
10 future interest rates.

11 “(G) TRANSITION RULE.—

12 “(i) IN GENERAL.—Notwithstanding
13 the preceding provisions of this paragraph,
14 for plan years beginning in 2006 or 2007,
15 the first, second, or third segment rate for
16 a plan with respect to any month shall be
17 equal to the sum of—

18 “(I) the product of such rate for
19 such month determined without re-
20 gard to this subparagraph, multiplied
21 by the applicable percentage, and

22 “(II) the product of the rate de-
23 termined under the rules of section
24 302(b)(5)(B)(ii)(II) (as in effect for
25 plan years beginning in 2005), multi-

1 plied by a percentage equal to 100
2 percent minus the applicable percent-
3 age.

4 “(ii) APPLICABLE PERCENTAGE.—For
5 purposes of clause (i), the applicable per-
6 centage is $33\frac{1}{3}$ percent for plan years be-
7 ginning in 2006 and $66\frac{2}{3}$ percent for plan
8 years beginning in 2007.

9 “(3) MORTALITY TABLE.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (C), the mortality table used in
12 determining any present value or making any
13 computation under this section shall be the
14 RP-2000 Combined Mortality Table, using
15 Scale AA, as published by the Society of Actu-
16 aries, as in effect on the date of the enactment
17 of the Pension Protection Act of 2005 and as
18 revised from time to time under subparagraph
19 (B).

20 “(B) PERIODIC REVISION.—The Secretary
21 of the Treasury shall (at least every 10 years)
22 make revisions in any table in effect under sub-
23 paragraph (A) to reflect the actual experience
24 of pension plans and projected trends in such
25 experience.

1 “(C) SUBSTITUTE MORTALITY TABLE.—

2 “(i) IN GENERAL.—Upon request by
3 the plan sponsor and approval by the Sec-
4 retary of the Treasury for a period not to
5 exceed 10 years, a mortality table which
6 meets the requirements of clause (ii) shall
7 be used in determining any present value
8 or making any computation under this sec-
9 tion. A mortality table described in this
10 clause shall cease to be in effect if the plan
11 actuary determines at any time that such
12 table does not meet the requirements of
13 subclauses (I) and (II) of clause (ii).

14 “(ii) REQUIREMENTS.—A mortality
15 table meets the requirements of this clause
16 if the Secretary of the Treasury determines
17 that—

18 “(I) such table reflects the actual
19 experience of the pension plan and
20 projected trends in such experience,
21 and

22 “(II) such table is significantly
23 different from the table described in
24 subparagraph (A).

1 “(iii) DEADLINE FOR DISPOSITION OF
2 APPLICATION.—Any mortality table sub-
3 mitted to the Secretary of the Treasury for
4 approval under this subparagraph shall be
5 treated as in effect for the succeeding plan
6 year unless the Secretary of the Treasury,
7 during the 180-day period beginning on
8 the date of such submission, disapproves of
9 such table and provides the reasons that
10 such table fails to meet the requirements
11 of clause (ii).

12 “(D) TRANSITION RULE.—Under regula-
13 tions of the Secretary of the Treasury, any dif-
14 ference in assumptions as set forth in the mor-
15 tality table specified in subparagraph (A) and
16 assumptions as set forth in the mortality table
17 described in section 302(d)(7)(C)(ii) (as in ef-
18 fect for plan years beginning in 2005) shall be
19 phased in ratably over the first period of 5 plan
20 years beginning in or after 2006 so as to be
21 fully effective for the fifth plan year.

22 “(4) PROBABILITY OF BENEFIT PAYMENTS IN
23 THE FORM OF LUMP SUMS OR OTHER OPTIONAL
24 FORMS.—For purposes of determining any present

1 value or making any computation under this section,
2 there shall be taken into account—

3 “(A) the probability that future benefit
4 payments under the plan will be made in the
5 form of optional forms of benefits provided
6 under the plan (including lump sum distribu-
7 tions, determined on the basis of the plan’s ex-
8 perience and other related assumptions), and

9 “(B) any difference in the present value of
10 such future benefit payments resulting from the
11 use of actuarial assumptions, in determining
12 benefit payments in any such optional form of
13 benefits, which are different from those speci-
14 fied in this subsection.

15 “(5) APPROVAL OF LARGE CHANGES IN ACTU-
16 ARIAL ASSUMPTIONS.—

17 “(A) IN GENERAL.—No actuarial assump-
18 tion used to determine the funding target for a
19 single-employer plan to which this paragraph
20 applies may be changed without the approval of
21 the Secretary of the Treasury.

22 “(B) PLANS TO WHICH PARAGRAPH AP-
23 PLIES.—This paragraph shall apply to a plan
24 only if—

1 “(i) the aggregate unfunded vested
2 benefits as of the close of the preceding
3 plan year (as determined under section
4 4006(a)(3)(E)(iii)) of such plan and all
5 other plans maintained by the contributing
6 sponsors (as defined in section
7 4001(a)(13)) and members of such spon-
8 sors’ controlled groups (as defined in sec-
9 tion 4001(a)(14)) which are covered by
10 title IV (disregarding plans with no un-
11 funded vested benefits) exceed
12 \$50,000,000; and

13 “(ii) the change in assumptions (de-
14 termined after taking into account any
15 changes in interest rate and mortality
16 table) results in a decrease in the funding
17 shortfall of the plan for the current plan
18 year that exceeds \$50,000,000, or that ex-
19 ceeds \$5,000,000 and that is 5 percent or
20 more of the funding target of the plan be-
21 fore such change.

22 “(i) SPECIAL RULES FOR AT-RISK PLANS.—

23 “(1) FUNDING TARGET FOR PLANS IN AT-RISK
24 STATUS.—

1 “(A) IN GENERAL.—In any case in which
2 a plan is in at-risk status for a plan year, the
3 funding target of the plan for the plan year is
4 the sum of—

5 “(i) the present value of all liabilities
6 to participants and their beneficiaries
7 under the plan for the plan year, as deter-
8 mined by using, in addition to the actu-
9 arial assumptions described in subsection
10 (g), the supplemental actuarial assump-
11 tions described in subparagraph (B), plus

12 “(ii) a loading factor determined
13 under subparagraph (C).

14 “(B) SUPPLEMENTAL ACTUARIAL ASSUMP-
15 TIONS.—The actuarial assumptions used in de-
16 termining the valuation of the funding target
17 shall include, in addition to the actuarial as-
18 sumptions described in subsection (h), an as-
19 sumption that all participants will elect benefits
20 at such times and in such forms as will result
21 in the highest present value of liabilities under
22 subparagraph (A)(i).

23 “(C) LOADING FACTOR.—The loading fac-
24 tor applied with respect to a plan under this
25 paragraph for any plan year is the sum of—

1 “(i) \$700, times the number of par-
2 ticipants in the plan, plus

3 “(ii) 4 percent of the funding target
4 (determined without regard to this para-
5 graph) of the plan for the plan year.

6 “(2) TARGET NORMAL COST OF AT-RISK
7 PLANS.—In any case in which a plan is in at-risk
8 status for a plan year, the target normal cost of the
9 plan for such plan year shall be the sum of—

10 “(A) the present value of all benefits which
11 are expected to accrue or be earned under the
12 plan during the plan year, determined under
13 the actuarial assumptions used under para-
14 graph (1), plus

15 “(B) the loading factor under paragraph
16 (1)(C), excluding the portion of the loading fac-
17 tor described in paragraph (1)(C)(i).

18 “(3) DETERMINATION OF AT-RISK STATUS.—
19 For purposes of this subsection, a plan is in ‘at-risk
20 status’ for a plan year if the funding target attain-
21 ment percentage of the plan for the preceding plan
22 year was less than 60 percent.

23 “(4) TRANSITION BETWEEN APPLICABLE FUND-
24 ING TARGETS AND BETWEEN APPLICABLE TARGET
25 NORMAL COSTS.—

1 “(A) IN GENERAL.—In any case in which
2 a plan which is in at-risk status for a plan year
3 has been in such status for a consecutive period
4 of fewer than 5 plan years, the applicable
5 amount of the funding target and of the target
6 normal cost shall be, in lieu of the amount de-
7 termined without regard to this paragraph, the
8 sum of—

9 “(i) the amount determined under this
10 section without regard to this subsection,
11 plus

12 “(ii) the transition percentage for
13 such plan year of the excess of the amount
14 determined under this subsection (without
15 regard to this paragraph) over the amount
16 determined under this section without re-
17 gard to this subsection.

18 “(B) TRANSITION PERCENTAGE.—For
19 purposes of this paragraph, the ‘transition per-
20 centage’ for a plan year is the product derived
21 by multiplying—

22 “(i) 20 percent, by

23 “(ii) the number of plan years during
24 the period described in subparagraph (A).

1 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-
2 TIONS.—

3 “(1) IN GENERAL.—For purposes of this sec-
4 tion, the due date for any payment of any minimum
5 required contribution for any plan year shall be 8½
6 months after the close of the plan year.

7 “(2) INTEREST.—Any payment required under
8 paragraph (1) for a plan year made after the valu-
9 ation date for such plan year shall be increased by
10 interest, for the period from the valuation date to
11 the payment date, at the effective rate of interest for
12 the plan for such plan year.

13 “(3) ACCELERATED QUARTERLY CONTRIBUTION
14 SCHEDULE FOR UNDERFUNDED PLANS.—

15 “(A) INTEREST PENALTY FOR FAILURE TO
16 MEET ACCELERATED QUARTERLY PAYMENT
17 SCHEDULE.—In any case in which the plan has
18 a funding shortfall for the preceding plan year,
19 if the required installment is not paid in full,
20 then the minimum required contribution for the
21 plan year (as increased under paragraph (2))
22 shall be further increased by an amount equal
23 to the interest on the amount of the under-
24 payment for the period of the underpayment,
25 using an interest rate equal to the excess of—

1 “(i) 175 percent of the Federal mid-
2 term rate (as in effect under section 1274
3 of the Internal Revenue Code of 1986 for
4 the 1st month of such plan year), over

5 “(ii) the effective rate of interest for
6 the plan for the plan year.

7 “(B) AMOUNT OF UNDERPAYMENT, PE-
8 RIOD OF UNDERPAYMENT.—For purposes of
9 subparagraph (A)—

10 “(i) AMOUNT.—The amount of the
11 underpayment shall be the excess of—

12 “(I) the required installment,
13 over

14 “(II) the amount (if any) of the
15 installment contributed to or under
16 the plan on or before the due date for
17 the installment.

18 “(ii) PERIOD OF UNDERPAYMENT.—
19 The period for which any interest is
20 charged under this paragraph with respect
21 to any portion of the underpayment shall
22 run from the due date for the installment
23 to the date on which such portion is con-
24 tributed to or under the plan.

1 “(iii) ORDER OF CREDITING CON-
 2 TRIBUTIONS.—For purposes of clause
 3 (i)(II), contributions shall be credited
 4 against unpaid required installments in the
 5 order in which such installments are re-
 6 quired to be paid.

7 “(C) NUMBER OF REQUIRED INSTALL-
 8 MENTS; DUE DATES.—For purposes of this
 9 paragraph—

10 “(i) PAYABLE IN 4 INSTALLMENTS.—
 11 There shall be 4 required installments for
 12 each plan year.

13 “(ii) TIME FOR PAYMENT OF IN-
 14 STALLMENTS.—The due dates for required
 15 installments are set forth in the following
 16 table:

“In the case of the following required installment:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the fol- lowing year

17 “(D) AMOUNT OF REQUIRED INSTALL-
 18 MENT.—For purposes of this paragraph—

1 “(i) IN GENERAL.—The amount of
2 any required installment shall be 25 per-
3 cent of the required annual payment.

4 “(ii) REQUIRED ANNUAL PAYMENT.—
5 For purposes of clause (i), the term ‘re-
6 quired annual payment’ means the lesser
7 of—

8 “(I) 90 percent of the minimum
9 required contribution (without regard
10 to any waiver under section 302(c)) to
11 the plan for the plan year under this
12 section, or

13 “(II) in the case of a plan year
14 beginning after 2006, 100 percent of
15 the minimum required contribution
16 (without regard to any waiver under
17 section 302(c)) to the plan for the
18 preceding plan year.

19 Subclause (II) shall not apply if the pre-
20 ceding plan year referred to in such clause
21 was not a year of 12 months.

22 “(E) FISCAL YEARS AND SHORT YEARS.—

23 “(i) FISCAL YEARS.—In applying this
24 paragraph to a plan year beginning on any
25 date other than January 1, there shall be

1 substituted for the months specified in this
2 paragraph, the months which correspond
3 thereto.

4 “(ii) SHORT PLAN YEAR.—This sub-
5 paragraph shall be applied to plan years of
6 less than 12 months in accordance with
7 regulations prescribed by the Secretary of
8 the Treasury.

9 “(4) LIQUIDITY REQUIREMENT IN CONNECTION
10 WITH QUARTERLY CONTRIBUTIONS.—

11 “(A) IN GENERAL.—A plan to which this
12 paragraph applies shall be treated as failing to
13 pay the full amount of any required installment
14 under paragraph (3) to the extent that the
15 value of the liquid assets paid in such install-
16 ment is less than the liquidity shortfall (wheth-
17 er or not such liquidity shortfall exceeds the
18 amount of such installment required to be paid
19 but for this paragraph).

20 “(B) PLANS TO WHICH PARAGRAPH AP-
21 PLIES.—This paragraph shall apply to a plan
22 (other than a plan that would be described in
23 subsection (f)(2)(B) if ‘100’ were substituted
24 for ‘500’ therein) which—

1 “(i) is required to pay installments
2 under paragraph (3) for a plan year, and

3 “(ii) has a liquidity shortfall for any
4 quarter during such plan year.

5 “(C) PERIOD OF UNDERPAYMENT.—For
6 purposes of paragraph (3)(A), any portion of an
7 installment that is treated as not paid under
8 subparagraph (A) shall continue to be treated
9 as unpaid until the close of the quarter in
10 which the due date for such installment occurs.

11 “(D) LIMITATION ON INCREASE.—If the
12 amount of any required installment is increased
13 by reason of subparagraph (A), in no event
14 shall such increase exceed the amount which,
15 when added to prior installments for the plan
16 year, is necessary to increase the funding target
17 attainment percentage of the plan for the plan
18 year (taking into account the expected increase
19 in funding target due to benefits accruing or
20 earned during the plan year) to 100 percent.

21 “(E) DEFINITIONS.—For purposes of this
22 subparagraph:

23 “(i) LIQUIDITY SHORTFALL.—The
24 term ‘liquidity shortfall’ means, with re-
25 spect to any required installment, an

1 amount equal to the excess (as of the last
2 day of the quarter for which such install-
3 ment is made) of—

4 “(I) the base amount with re-
5 spect to such quarter, over

6 “(II) the value (as of such last
7 day) of the plan’s liquid assets.

8 “(ii) BASE AMOUNT.—

9 “(I) IN GENERAL.—The term
10 ‘base amount’ means, with respect to
11 any quarter, an amount equal to 3
12 times the sum of the adjusted dis-
13 bursements from the plan for the 12
14 months ending on the last day of such
15 quarter.

16 “(II) SPECIAL RULE.—If the
17 amount determined under subclause
18 (I) exceeds an amount equal to 2
19 times the sum of the adjusted dis-
20 bursements from the plan for the 36
21 months ending on the last day of the
22 quarter and an enrolled actuary cer-
23 tifies to the satisfaction of the Sec-
24 retary of the Treasury that such ex-
25 cess is the result of nonrecurring cir-

1 cumstances, the base amount with re-
2 spect to such quarter shall be deter-
3 mined without regard to amounts re-
4 lated to those nonrecurring cir-
5 cumstances.

6 “(iii) DISBURSEMENTS FROM THE
7 PLAN.—The term ‘disbursements from the
8 plan’ means all disbursements from the
9 trust, including purchases of annuities,
10 payments of single sums and other bene-
11 fits, and administrative expenses.

12 “(iv) ADJUSTED DISBURSEMENTS.—
13 The term ‘adjusted disbursements’ means
14 disbursements from the plan reduced by
15 the product of—

16 “(I) the plan’s funding target at-
17 tainment percentage for the plan year,
18 and

19 “(II) the sum of the purchases of
20 annuities, payments of single sums,
21 and such other disbursements as the
22 Secretary of the Treasury shall pro-
23 vide in regulations.

24 “(v) LIQUID ASSETS.—The term ‘liq-
25 uid assets’ means cash, marketable securi-

1 ties, and such other assets as specified by
2 the Secretary of the Treasury in regula-
3 tions.

4 “(vi) QUARTER.—The term ‘quarter’
5 means, with respect to any required install-
6 ment, the 3-month period preceding the
7 month in which the due date for such in-
8 stallment occurs.

9 “(F) REGULATIONS.—The Secretary of the
10 Treasury may prescribe such regulations as are
11 necessary to carry out this paragraph.

12 “(k) IMPOSITION OF LIEN WHERE FAILURE TO
13 MAKE REQUIRED CONTRIBUTIONS.—

14 “(1) IN GENERAL.—In the case of a plan cov-
15 ered under section 4021 of this Act and to which
16 this subsection applies (as provided under paragraph
17 (2)), if—

18 “(A) any person fails to make a contribu-
19 tion payment required by section 302 and this
20 section before the due date for such payment,
21 and

22 “(B) the unpaid balance of such payment
23 (including interest), when added to the aggre-
24 gate unpaid balance of all preceding such pay-
25 ments for which payment was not made before

1 the due date (including interest), exceeds
2 \$1,000,000,
3 then there shall be a lien in favor of the plan in the
4 amount determined under paragraph (3) upon all
5 property and rights to property, whether real or per-
6 sonal, belonging to such person and any other per-
7 son who is a member of the same controlled group
8 of which such person is a member.

9 “(2) PLANS TO WHICH SUBSECTION APPLIES.—
10 This subsection shall apply to a defined benefit plan
11 which is a single-employer plan for any plan year for
12 which the funding target attainment percentage (as
13 defined in subsection (d)(2)) of such plan is less
14 than 100 percent.

15 “(3) AMOUNT OF LIEN.—For purposes of para-
16 graph (1), the amount of the lien shall be equal to
17 the aggregate unpaid balance of contribution pay-
18 ments required under this section and section 302
19 for which payment has not been made before the due
20 date.

21 “(4) NOTICE OF FAILURE; LIEN.—

22 “(A) NOTICE OF FAILURE.—A person
23 committing a failure described in paragraph (1)
24 shall notify the Pension Benefit Guaranty Cor-

1 poration of such failure within 10 days of the
2 due date for the required contribution payment.

3 “(B) PERIOD OF LIEN.—The lien imposed
4 by paragraph (1) shall arise on the due date for
5 the required contribution payment and shall
6 continue until the last day of the first plan year
7 in which the plan ceases to be described in
8 paragraph (1)(B). Such lien shall continue to
9 run without regard to whether such plan con-
10 tinues to be described in paragraph (2) during
11 the period referred to in the preceding sentence.

12 “(C) CERTAIN RULES TO APPLY.—Any
13 amount with respect to which a lien is imposed
14 under paragraph (1) shall be treated as taxes
15 due and owing the United States and rules
16 similar to the rules of subsections (c), (d), and
17 (e) of section 4068 shall apply with respect to
18 a lien imposed by subsection (a) and the
19 amount with respect to such lien.

20 “(5) ENFORCEMENT.—Any lien created under
21 paragraph (1) may be perfected and enforced only
22 by the Pension Benefit Guaranty Corporation, or at
23 the direction of the Pension Benefit Guaranty Cor-
24 poration, by the contributing sponsor (or any mem-

1 ber of the controlled group of the contributing spon-
2 sor).

3 “(6) DEFINITIONS.—For purposes of this
4 subsection—

5 “(A) CONTRIBUTION PAYMENT.—The term
6 ‘contribution payment’ means, in connection
7 with a plan, a contribution payment required to
8 be made to the plan, including any required in-
9 stallment under paragraphs (3) and (4) of sub-
10 section (i).

11 “(B) DUE DATE; REQUIRED INSTALL-
12 MENT.—The terms ‘due date’ and ‘required in-
13 stallment’ have the meanings given such terms
14 by subsection (j), except that in the case of a
15 payment other than a required installment, the
16 due date shall be the date such payment is re-
17 quired to be made under section 303.

18 “(C) CONTROLLED GROUP.—The term
19 ‘controlled group’ means any group treated as
20 a single employer under subsections (b), (c),
21 (m), and (o) of section 414 of the Internal Rev-
22 enue Code of 1986.

23 “(1) QUALIFIED TRANSFERS TO HEALTH BENEFIT
24 ACCOUNTS.—In the case of a qualified transfer (as de-
25 fined in section 420 of the Internal Revenue Code of

1 1986), any assets so transferred shall not, for purposes
2 of this section, be treated as assets in the plan.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 in section 1 of such Act (as amended by section 101) is
5 amended by inserting after the item relating to section
6 302 the following new item:

“Sec. 303. Minimum funding standards for single-employer defined benefit pension plans.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply with respect to plan years begin-
9 ning after 2005.

10 **SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EM-**
11 **PLOYER PLANS.**

12 (a) PROHIBITION OF SHUTDOWN BENEFITS AND
13 OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS
14 UNDER SINGLE-EMPLOYER PLANS.—Section 206 of the
15 Employee Retirement Income Security Act of 1974 (29
16 U.S.C. 1056) is amended by adding at the end the fol-
17 lowing new subsection:

18 “(g) PROHIBITION OF SHUTDOWN BENEFITS AND
19 OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS
20 UNDER SINGLE-EMPLOYER PLANS.—

21 “(1) IN GENERAL.—No pension plan which is a
22 single-employer plan may provide benefits to which
23 participants are entitled solely by reason of the oc-
24 currence of—

1 “(A) a plant shutdown, or

2 “(B) any other unpredictable contingent
3 event.

4 “(2) UNPREDICTABLE CONTINGENT EVENT.—

5 For purposes of this subsection, the term ‘unpredict-
6 able contingent event’ means an event other than—

7 “(A) attainment of any age, performance
8 of any service, receipt or derivation of any com-
9 pensation, or the occurrence of death or dis-
10 ability, or

11 “(B) an event which is reasonably and reli-
12 ably predictable (as determined by the Sec-
13 retary of the Treasury).”.

14 (b) OTHER LIMITS ON BENEFITS AND BENEFIT AC-
15 CRUALS.—

16 (1) IN GENERAL.—Section 206 of such Act (as
17 amended by subsection (a)) is amended further by
18 adding at the end the following new subsection:

19 “(h) FUNDING-BASED LIMITS ON BENEFITS AND
20 BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER
21 PLANS.—

22 “(1) LIMITATIONS ON PLAN AMENDMENTS IN-
23 CREASING LIABILITY FOR BENEFITS.—

24 “(A) IN GENERAL.—No amendment to a
25 single-employer plan which has the effect of in-

1 creasing liabilities of the plan by reason of in-
2 creases in benefits, establishment of new bene-
3 fits, changing the rate of benefit accrual, or
4 changing the rate at which benefits become
5 nonforfeitable to the plan may take effect dur-
6 ing any plan year if the funding target attain-
7 ment percentage as of the valuation date of the
8 plan for such plan year is—

9 “(i) less than 80 percent, or
10 “(ii) would be less than 80 percent
11 taking into account such amendment.

12 For purposes of this subparagraph, any in-
13 crease in benefits under the plan by reason of
14 an increase in the benefit rate provided under
15 the plan or on the basis of an increase in com-
16 pensation shall be treated as affected by plan
17 amendment.

18 “(B) EXEMPTION.—Subparagraph (A)
19 shall cease to apply with respect to any plan
20 year, effective as of the first date of the plan
21 year (or if later, the effective date of the
22 amendment), upon payment by the plan sponsor
23 of a contribution (in addition to any minimum
24 required contribution under section 303) equal
25 to—

1 “(i) in the case of subparagraph
2 (A)(i), the amount of the increase in the
3 funding target of the plan (under section
4 303) for the plan year attributable to the
5 amendment, and

6 “(ii) in the case of subparagraph
7 (A)(ii), the amount sufficient to result in a
8 funding target attainment percentage of 80
9 percent.

10 “(2) FUNDING-BASED LIMITATION ON CERTAIN
11 FORMS OF DISTRIBUTION.—

12 “(A) IN GENERAL.—A single-employer
13 plan shall provide that, in any case in which the
14 plan’s funding target attainment percentage as
15 of the valuation date of the plan for a plan year
16 is less than 80 percent, the plan may not after
17 such date pay any prohibited payment (as de-
18 fined in section 206(e)).

19 “(B) EXCEPTION.—Subparagraph (A)
20 shall not apply to any plan for any plan year
21 if the terms of such plan (as in effect for the
22 period beginning on June 29, 2005, and ending
23 with such plan year) provide for no benefit ac-
24 cruals with respect to any participant during
25 such period.

1 “(3) LIMITATIONS ON BENEFIT ACCRUALS FOR
2 PLANS WITH SEVERE FUNDING SHORTFALLS.—A
3 single-employer plan shall provide that, in any case
4 in which the plan’s funding target attainment per-
5 centage as of the valuation date of the plan for a
6 plan year is less than 60 percent, all future benefit
7 accruals under the plan shall cease as of such date.

8 “(4) NEW PLANS.—Paragraphs (1) and (3)
9 shall not apply to a plan for the first 5 plan years
10 of the plan. For purposes of this paragraph, the ref-
11 erence in this paragraph to a plan shall include a
12 reference to any predecessor plan.

13 “(5) PRESUMED UNDERFUNDING FOR PUR-
14 POSES OF BENEFIT LIMITATIONS BASED ON PRIOR
15 YEAR’S FUNDING STATUS.—

16 “(A) PRESUMPTION OF CONTINUED
17 UNDERFUNDING.—In any case in which a ben-
18 efit limitation under paragraph (1), (2), or (3)
19 has been applied to a plan with respect to the
20 plan year preceding the current plan year, the
21 funding target attainment percentage of the
22 plan as of the valuation date of the plan for the
23 current plan year shall be presumed to be equal
24 to the funding target attainment percentage of
25 the plan as of the valuation date of the plan for

1 the preceding plan year until the enrolled actu-
2 ary of the plan certifies the actual funding tar-
3 get attainment percentage of the plan as of the
4 valuation date of the plan for the current plan
5 year.

6 “(B) PRESUMPTION OF UNDERFUNDING
7 AFTER 10TH MONTH.—In any case in which no
8 such certification is made with respect to the
9 plan before the first day of the 10th month of
10 the current plan year, for purposes of para-
11 graphs (1), (2), and (3), the plan’s funding tar-
12 get attainment percentage shall be conclusively
13 presumed to be less than 60 percent as of the
14 first day of such 10th month, and such day
15 shall be deemed, for purposes of such para-
16 graphs, to be the valuation date of the plan for
17 the current plan year.

18 “(C) PRESUMPTION OF UNDERFUNDING
19 AFTER 4TH MONTH FOR NEARLY UNDER-
20 FUNDED PLANS.—In any case in which—

21 “(i) a benefit limitation under para-
22 graph (1), (2), or (3) did not apply to a
23 plan with respect to the plan year pre-
24 ceding the current plan year, but the fund-
25 ing target attainment percentage of the

1 plan for such preceding plan year was not
2 more than 10 percentage points greater
3 than the percentage which would have
4 caused such paragraph to apply to the plan
5 with respect to such preceding plan year,
6 and

7 “(ii) as of the first day of the 4th
8 month of the current plan year, the en-
9 rolled actuary of the plan has not certified
10 the actual funding target attainment per-
11 centage of the plan as of the valuation date
12 of the plan for the current plan year,
13 until the enrolled actuary so certifies, such first
14 day shall be deemed, for purposes of such para-
15 graph, to be the valuation date of the plan for
16 the current plan year and the funding target at-
17 tainment percentage of the plan as of such first
18 day shall, for purposes of such paragraph, be
19 presumed to be equal to 10 percentage points
20 less than the funding target attainment per-
21 centage of the plan as of the valuation date of
22 the plan for such preceding plan year.

23 “(6) RESTORATION BY PLAN AMENDMENT OF
24 BENEFITS OR BENEFIT ACCRUAL.—In any case in
25 which a prohibition under paragraph (2) of the pay-

1 ment of lump sum distributions or benefits in any
2 other accelerated form or a cessation of benefit ac-
3 cruals under paragraph (3) is applied to a plan with
4 respect to any plan year and such prohibition or ces-
5 sation, as the case may be, ceases to apply to any
6 subsequent plan year, the plan may provide for the
7 resumption of such benefit payment or such benefit
8 accrual only by means of the adoption of a plan
9 amendment after the valuation date of the plan for
10 such subsequent plan year. The preceding sentence
11 shall not apply to a prohibition or cessation required
12 by reason of paragraph (5).

13 “(7) FUNDING TARGET ATTAINMENT PERCENT-
14 AGE.—For purposes of this subsection, the term
15 ‘funding target attainment percentage’ has the
16 meaning provided such term under section
17 303(d)(2).”.

18 (2) NOTICE REQUIREMENT.—

19 (A) IN GENERAL.—Section 101 of such
20 Act (29 U.S.C. 1021) is amended—

21 (i) by redesignating subsection (j) as
22 subsection (k); and

23 (ii) by inserting after subsection (i)
24 the following new subsection:

1 “(j) NOTICE OF FUNDING-BASED LIMITATION ON
2 CERTAIN FORMS OF DISTRIBUTION.—The plan adminis-
3 trator of a single-employer plan shall provide a written no-
4 tice to plan participants and beneficiaries within 30 days
5 after the plan has become subject to the restriction de-
6 scribed in section 206(h)(2) or at such other time as may
7 be determined by the Secretary.”.

8 (B) ENFORCEMENT.—Section 502(c)(4) of
9 such Act (29 U.S.C. 1132(c)(4)) is amended by
10 striking “section 302(b)(7)(F)(iv)” and insert-
11 ing “sections 101(j) and 302(b)(7)(F)(iv)”.

12 (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A
13 plan shall not fail to meet the requirements of section
14 204(g) of the Employee Retirement Income Security Act
15 of 1974 or section 411(d)(6) of the Internal Revenue Code
16 of 1986 solely by reason of the adoption by the plan of
17 an amendment necessary to meet the requirements of the
18 amendments made by this section.

19 (d) EFFECTIVE DATE.—

20 (1) SHUTDOWN BENEFITS.—Except as provided
21 in paragraph (3), the amendments made by sub-
22 section (a) shall apply with respect to plant shut-
23 downs, or other unpredictable contingent events, oc-
24 curring after 2006.

1 (2) OTHER BENEFITS.—Except as provided in
2 paragraph (3), the amendments made by subsection
3 (b) shall apply with respect to plan years beginning
4 after 2006.

5 (3) COLLECTIVE BARGAINING EXCEPTION.—In
6 the case of a plan maintained pursuant to 1 or more
7 collective bargaining agreements between employee
8 representatives and 1 or more employers ratified be-
9 fore the date of the enactment of this Act, the
10 amendments made by this subsection shall not apply
11 to plan years beginning before the earlier of—

12 (A) the later of—

13 (i) the date on which the last collec-
14 tive bargaining agreement relating to the
15 plan terminates (determined without re-
16 gard to any extension thereof agreed to
17 after the date of the enactment of this
18 Act), or

19 (ii) the first day of the first plan year
20 to which the amendments made by this
21 subsection would (but for this subpara-
22 graph) apply, or

23 (B) January 1, 2009.

24 For purposes of clause (i), any plan amendment
25 made pursuant to a collective bargaining agreement

1 relating to the plan which amends the plan solely to
2 conform to any requirement added by this subsection
3 shall not be treated as a termination of such collec-
4 tive bargaining agreement.

5 **SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.**

6 (a) MISCELLANEOUS AMENDMENTS TO TITLE I.—
7 Subtitle B of title I of such Act (29 U.S.C. 1021 et seq.)
8 is amended—

9 (1) in section 101(d)(3), by striking “section
10 302(e)” and inserting “section 303(j)”;

11 (2) in section 101(f)(2)(B), by striking clause
12 (i) and inserting the following:

13 “(i) a statement as to whether—

14 “(I) in the case of a single-em-
15 ployer plan, the plan’s funding target
16 attainment percentage (as defined in
17 section 303(d)(2)), or

18 “(II) in the case of a multiem-
19 ployer plan, the plan’s funded percent-
20 age (as defined in section 305(d)(2)),
21 is at least 100 percent (and, if not, the ac-
22 tual percentage);”;

23 (3) in section 103(d)(8)(B), by striking “the re-
24 quirements of section 302(c)(3)” and inserting “the

1 applicable requirements of sections 303(h) and
2 304(c)(3)”;

3 (4) in section 103(d), by striking paragraph
4 (11) and inserting the following:

5 “(11) If the current value of the assets of the
6 plan is less than 70 percent of—

7 “(A) in the case of a single-employer plan,
8 the funding target (as defined in section
9 303(d)(1)) of the plan, or

10 “(B) in the case of a multiemployer plan,
11 the current liability (as defined in section
12 304(c)(6)(D)) under the plan,

13 the percentage which such value is of the amount
14 described in subparagraph (A) or (B).”;

15 (5) in section 203(a)(3)(C), by striking “section
16 302(c)(8)” and inserting “section 302(d)(2)”;

17 (6) in section 204(g)(1), by striking “section
18 302(c)(8)” and inserting “section 302(d)(2)”;

19 (7) in section 204(i)(2)(B), by striking “section
20 302(c)(8)” and inserting “section 302(d)(2)”;

21 (8) in section 204(i)(3), by striking “funded
22 current liability percentage (within the meaning of
23 section 302(d)(8) of this Act)” and inserting “fund-
24 ing target attainment percentage (as defined in sec-
25 tion 303(d)(2))”;

1 (9) in section 204(i)(4), by striking “section
2 302(c)(11)(A), without regard to section
3 302(c)(11)(B)” and inserting “section 302(b)(1),
4 without regard to section 302(b)(2)”;

5 (10) in section 206(e)(1), by striking “section
6 302(d)” and inserting “section 303(j)(4)”, and by
7 striking “section 302(e)(5)” and inserting “section
8 303(j)(4)(E)(i)”;

9 (11) in section 206(e)(3), by striking “section
10 302(e) by reason of paragraph (5)(A) thereof” and
11 inserting “section 303(j)(3) by reason of section
12 303(j)(4)(A)”;

13 (12) in sections 101(e)(3), 403(c)(1), and
14 408(b)(13), by striking “American Jobs Creation
15 Act of 2004” and inserting “Pension Protection Act
16 of 2005”.

17 (b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—
18 Title IV of such Act is amended—

19 (1) in section 4001(a)(13) (29 U.S.C.
20 1301(a)(13)), by striking “302(c)(11)(A)” and in-
21 serting “302(b)(1)”, by striking “412(c)(11)(A)”
22 and inserting “412(b)(1)”, by striking
23 “302(c)(11)(B)” and inserting “302(b)(2)”, and by
24 striking “412(c)(11)(B)” and inserting “412(b)(2)”;

1 (2) in section 4003(e)(1) (29 U.S.C.
2 1303(e)(1)), by striking “302(f)(1)(A) and (B)” and
3 inserting “303(k)(1)(A) and (B)”, and by striking
4 “412(n)(1)(A) and (B)” and inserting
5 “430(k)(1)(A) and (B)”;

6 (3) in section 4010(b)(2) (29 U.S.C.
7 1310(b)(2)), by striking “302(f)(1)(A) and (B)” and
8 inserting “303(k)(1)(A) and (B)”, and by striking
9 “412(n)(1)(A) and (B)” and inserting
10 “430(k)(1)(A) and (B)”;

11 (4) in section 4011(b) (29 U.S.C. 1311(b)), by
12 striking “to which” and all that follows and insert-
13 ing “for any plan year for which the plan’s funding
14 target attainment percentage (as defined in section
15 303(d)(2)) is at least 90 percent.”;

16 (5) in section 4062(c)(1) (29 U.S.C.
17 1362(c)(1)), by striking paragraphs (1), (2), and (3)
18 and inserting the following:

19 “(1)(A) in the case of a single-employer plan,
20 the sum of the shortfall amortization charge (within
21 the meaning of section 303(c)(1) of this Act and
22 430(c)(1) of the Internal Revenue Code of 1986)
23 with respect to the plan (if any) for the plan year
24 in which the termination date occurs, plus the aggre-
25 gate total of shortfall amortization installments (if

1 any) determined for succeeding plan years under
2 section 303(c)(2) of this Act and section 430(c)(2)
3 of such Code (which, for purposes of this subpara-
4 graph, shall include any increase in such sum which
5 would result if all applications for waivers of the
6 minimum funding standard under section 302(e) of
7 this Act and section 412(c) of such Code which are
8 pending with respect to such plan were denied and
9 if no additional contributions (other than those al-
10 ready made by the termination date) were made for
11 the plan year in which the termination date occurs
12 or for any previous plan year), or

13 “(B) in the case of a multiemployer plan, the
14 outstanding balance of the accumulated funding de-
15 ficiencies (within the meaning of section 304(a)(2)
16 of this Act and section 431(a) of the Internal Rev-
17 enue Code of 1986) of the plan (if any) (which, for
18 purposes of this subparagraph, shall include the
19 amount of any increase in such accumulated funding
20 deficiencies of the plan which would result if all
21 pending applications for waivers of the minimum
22 funding standard under section 302(e) of this Act or
23 section 412(c) of such Code and for extensions of
24 the amortization period under section 304(d) of this
25 Act or section 431(d) of such Code with respect to

1 such plan were denied and if no additional contribu-
2 tions (other than those already made by the termi-
3 nation date) were made for the plan year in which
4 the termination date occurs or for any previous plan
5 year),

6 “(2)(A) in the case of a single-employer plan,
7 the sum of the waiver amortization charge (within
8 the meaning of section 303(e)(1) of this Act and
9 430(j)(2) of the Internal Revenue Code of 1986)
10 with respect to the plan (if any) for the plan year
11 in which the termination date occurs, plus the aggre-
12 gate total of waiver amortization installments (if
13 any) determined for succeeding plan years under
14 section 303(e)(2) of this Act and section 430(j)(3)
15 of such Code, or

16 “(B) in the case of a multiemployer plan, the
17 outstanding balance of the amount of waived fund-
18 ing deficiencies of the plan waived before such date
19 under section 302(c) of this Act or section 412(c) of
20 such Code (if any), and

21 “(3) in the case of a multiemployer plan, the
22 outstanding balance of the amount of decreases in
23 the minimum funding standard allowed before such
24 date under section 304(d) of this Act or section
25 431(d) of such Code (if any);”;

1 (6) in section 4071 (29 U.S.C. 1371), by strik-
2 ing “302(f)(4)” and inserting “303(k)(4)”;

3 (7) in section 4243(a)(1)(B) (29 U.S.C.
4 1423(a)(1)(B)), by striking “302(a)” and inserting
5 “304(a)”, and, in clause (i), by striking “302(a)”
6 and inserting “304(a)”;

7 (8) in section 4243(f)(1) (29 U.S.C.
8 1423(f)(1)), by striking “303(a)” and inserting
9 “302(c)”;

10 (9) in section 4243(f)(2) (29 U.S.C.
11 1423(f)(2)), by striking “303(c)” and inserting
12 “302(c)(3)”;

13 (10) in section 4243(g) (29 U.S.C. 1423(g)), by
14 striking “302(c)(3)” and inserting “304(c)(3)”.

15 (c) AMENDMENTS TO REORGANIZATION PLAN NO. 4
16 OF 1978.—Section 106(b)(ii) of Reorganization Plan No.
17 4 of 1978 (ratified and affirmed as law by Public Law
18 98–532 (98 Stat. 2705)) is amended by striking
19 “302(c)(8)” and inserting “302(d)(2)”, by striking
20 “304(a) and (b)(2)(A)” and inserting “304(d)(1), (d)(2),
21 and (e)(2)(A)”, and by striking “412(c)(8), (e), and
22 (f)(2)(A)” and inserting “412(d)(2) and 431(d)(1), (d)(2),
23 and (e)(2)(A)”.

1 (d) REPEAL OF EXPIRED AUTHORITY FOR TEM-
2 PORARY VARIANCES.—Section 207 of such Act (29 U.S.C.
3 1057) is repealed.

4 (e) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to plan years beginning after 2005.

6 **Subtitle B—Amendments to**
7 **Internal Revenue Code of 1986**

8 **SEC. 111.** [SEE INTRODUCED BILL, PAGE 71, LINE 1 THROUGH PAGE
9 140, LINE 13].

10 **Subtitle C—Other Provisions**

11 **SEC. 121. MODIFICATION OF TRANSITION RULE TO PEN-**
12 **SION FUNDING REQUIREMENTS.**

13 (a) IN GENERAL.—In the case of a plan that—

14 (1) was not required to pay a variable rate pre-
15 mium for the plan year beginning in 1996,

16 (2) has not, in any plan year beginning after
17 1995, merged with another plan (other than a plan
18 sponsored by an employer that was in 1996 within
19 the controlled group of the plan sponsor); and

20 (3) is sponsored by a company that is engaged
21 primarily in the interurban or interstate passenger
22 bus service,

23 the rules described in subsection (b) shall apply for any
24 plan year beginning after 2005.

1 (b) MODIFIED RULES.—The rules described in this
2 subsection are as follows:

3 (1) For purposes of section 430(i)(3) of the In-
4 ternal Revenue Code of 1986 and section 303(j)(3)
5 of the Employee Retirement Income Security Act of
6 1974, the plan shall be treated as not having a fund-
7 ing shortfall for any plan year.

8 (2) For purposes of—

9 (A) determining unfunded vested benefits
10 under section 4006(a)(3)(E)(iii) of such Act,
11 and

12 (B) determining any present value or mak-
13 ing any computation under section 412 of such
14 Code or section 302 of such Act,

15 the mortality table shall be the mortality table used
16 by the plan.

17 (3) Notwithstanding section 303(f)(4)(B) of
18 such Act, for purposes of section 303(c)(4)(B) of
19 such Act, the value of plan assets is deemed to be
20 such amount, reduced by the amount of the pre-
21 funding balance if, pursuant to a binding written
22 agreement with the Pension Benefit Guaranty Cor-
23 poration entered into before January 1, 2006, the
24 funding standard carryover balance is not available

1 to reduce the minimum required contribution for the
 2 plan year.

3 (4) For purposes of section 303(c)(4)(B) of
 4 such Act (relating to phase-in of funding target for
 5 determination of funding shortfall), the applicable
 6 percentage shall be determined in accordance with
 7 the following table (in lieu of the table provided in
 8 such section):

In the case of a plan year beginning in calendar year:	The appli- cable per- centage is:
2006	92 percent
2007	94 percent
2008	96 percent
2009	98 percent.

9 (c) DEFINITIONS.—Any term used in this section
 10 which is also used in section 303 of such Act shall have
 11 the meaning provided such term in such section.

12 (d) CONFORMING AMENDMENT.—

13 (1) Section 769 of the Retirement Protection
 14 Act of 1994 is amended by striking subsection (c).

15 (2) The amendment made this subsection shall
 16 apply to plan years beginning after 2005.

17 **SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COM-**
 18 **PENSATION PLANS WHEN EMPLOYER DE-**
 19 **FINED BENEFIT PLAN IN AT-RISK STATUS.**

20 [*See introduced bill, page 142, line 3 through page*
 21 *143, line 16*]

1 **TITLE II—FUNDING RULES FOR**
2 **MULTIEMPLOYER DEFINED**
3 **BENEFIT PLANS**

4 **Subtitle A—Amendments to Em-**
5 **ployee Retirement Income Secu-**
6 **rity Act of 1974**

7 **SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED**
8 **BENEFIT PLANS.**

9 (a) IN GENERAL.—Part 3 of subtitle B of title I of
10 the Employee Retirement Income Security Act of 1974 (as
11 amended by section 102) is amended further by inserting
12 after section 303 the following new section:

13 “MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER
14 PLANS

15 “SEC. 304. (a) IN GENERAL.—For purposes of sec-
16 tion 302, the accumulated funding deficiency of a multi-
17 employer plan for any plan year is—

18 “(1) except as provided in paragraph (2), the
19 amount, determined as of the end of the plan year,
20 equal to the excess (if any) of the total charges to
21 the funding standard account of the plan for all plan
22 years (beginning with the first plan year for which
23 this part applies to the plan) over the total credits
24 to such account for such years, and

1 “(2) if the multiemployer plan is in reorganiza-
2 tion for any plan year, the accumulated funding de-
3 ficiency of the plan determined under section 4243.

4 “(b) FUNDING STANDARD ACCOUNT.—

5 “(1) ACCOUNT REQUIRED.—Each multiem-
6 ployer plan to which this part applies shall establish
7 and maintain a funding standard account. Such ac-
8 count shall be credited and charged solely as pro-
9 vided in this section.

10 “(2) CHARGES TO ACCOUNT.—For a plan year,
11 the funding standard account shall be charged with
12 the sum of—

13 “(A) the normal cost of the plan for the
14 plan year,

15 “(B) the amounts necessary to amortize in
16 equal annual installments (until fully amor-
17 tized)—

18 “(i) in the case of a plan in existence
19 on January 1, 1974, the unfunded past
20 service liability under the plan on the first
21 day of the first plan year to which this sec-
22 tion applies, over a period of 40 plan
23 years,

24 “(ii) in the case of a plan which comes
25 into existence after January 1, 1974, the

1 unfunded past service liability under the
2 plan on the first day of the first plan year
3 to which this section applies, over a period
4 of 15 plan years,

5 “(iii) separately, with respect to each
6 plan year, the net increase (if any) in un-
7 funded past service liability under the plan
8 arising from plan amendments adopted in
9 such year, over a period of 15 plan years,

10 “(iv) separately, with respect to each
11 plan year, the net experience loss (if any)
12 under the plan, over a period of 15 plan
13 years, and

14 “(v) separately, with respect to each
15 plan year, the net loss (if any) resulting
16 from changes in actuarial assumptions
17 used under the plan, over a period of 15
18 plan years,

19 “(C) the amount necessary to amortize
20 each waived funding deficiency (within the
21 meaning of section 302(c)(3)) for each prior
22 plan year in equal annual installments (until
23 fully amortized) over a period of 15 plan years,

24 “(D) the amount necessary to amortize in
25 equal annual installments (until fully amor-

1 tized) over a period of 5 plan years any amount
2 credited to the funding standard account under
3 section 302(b)(3)(D) (as in effect on the day
4 before the date of the enactment of the Pension
5 Protection Act of 2005), and

6 “(E) the amount necessary to amortize in
7 equal annual installments (until fully amor-
8 tized) over a period of 20 years the contribu-
9 tions which would be required to be made under
10 the plan but for the provisions of section
11 302(c)(7)(A)(i)(I) (as in effect on the day be-
12 fore the date of the enactment of the Pension
13 Protection Act of 2005).

14 “(3) CREDITS TO ACCOUNT.—For a plan year,
15 the funding standard account shall be credited with
16 the sum of—

17 “(A) the amount considered contributed by
18 the employer to or under the plan for the plan
19 year,

20 “(B) the amount necessary to amortize in
21 equal annual installments (until fully amor-
22 tized)—

23 “(i) separately, with respect to each
24 plan year, the net decrease (if any) in un-
25 funded past service liability under the plan

1 arising from plan amendments adopted in
2 such year, over a period of 15 plan years,
3 “(ii) separately, with respect to each
4 plan year, the net experience gain (if any)
5 under the plan, over a period of 15 plan
6 years, and

7 “(iii) separately, with respect to each
8 plan year, the net gain (if any) resulting
9 from changes in actuarial assumptions
10 used under the plan, over a period of 15
11 plan years,

12 “(C) the amount of the waived funding de-
13 ficiency (within the meaning of section
14 302(c)(3)) for the plan year, and

15 “(D) in the case of a plan year for which
16 the accumulated funding deficiency is deter-
17 mined under the funding standard account if
18 such plan year follows a plan year for which
19 such deficiency was determined under the alter-
20 native minimum funding standard under section
21 305 (as in effect on the day before the date of
22 the enactment of the Pension Protection Act of
23 2005), the excess (if any) of any debit balance
24 in the funding standard account (determined
25 without regard to this subparagraph) over any

1 debit balance in the alternative minimum fund-
2 ing standard account.

3 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-
4 ORTIZED TO PLAN YEARS BEFORE 2006.—In the case
5 of any amount amortized under section 302(b) (as
6 in effect on the day before the date of the enactment
7 of the Pension Protection Act of 2005) over any pe-
8 riod beginning with a plan year beginning before
9 2006, in lieu of the amortization described in para-
10 graphs (2)(B) and (3)(B), such amount shall con-
11 tinue to be amortized under such section as so in ef-
12 fect.

13 “(5) COMBINING AND OFFSETTING AMOUNTS
14 TO BE AMORTIZED.—Under regulations prescribed
15 by the Secretary of the Treasury, amounts required
16 to be amortized under paragraph (2) or paragraph
17 (3), as the case may be—

18 “(A) may be combined into one amount
19 under such paragraph to be amortized over a
20 period determined on the basis of the remaining
21 amortization period for all items entering into
22 such combined amount, and

23 “(B) may be offset against amounts re-
24 quired to be amortized under the other such
25 paragraph, with the resulting amount to be am-

1 ortized over a period determined on the basis of
2 the remaining amortization periods for all items
3 entering into whichever of the two amounts
4 being offset is the greater.

5 “(6) INTEREST.—Except as provided in sub-
6 section (c)(9), the funding standard account (and
7 items therein) shall be charged or credited (as deter-
8 mined under regulations prescribed by the Secretary
9 of the Treasury) with interest at the appropriate
10 rate consistent with the rate or rates of interest used
11 under the plan to determine costs.

12 “(7) CERTAIN AMORTIZATION CHARGES AND
13 CREDITS.—In the case of a plan which, immediately
14 before the date of the enactment of the Multiem-
15 ployer Pension Plan Amendments Act of 1980, was
16 a multiemployer plan (within the meaning of section
17 3(37) as in effect immediately before such date)—

18 “(A) any amount described in paragraph
19 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this sub-
20 section which arose in a plan year beginning be-
21 fore such date shall be amortized in equal an-
22 nual installments (until fully amortized) over 40
23 plan years, beginning with the plan year in
24 which the amount arose;

1 “(B) any amount described in paragraph
2 (2)(B)(iv) or (3)(B)(ii) of this subsection which
3 arose in a plan year beginning before such date
4 shall be amortized in equal annual installments
5 (until fully amortized) over 20 plan years, be-
6 ginning with the plan year in which the amount
7 arose;

8 “(C) any change in past service liability
9 which arises during the period of 3 plan years
10 beginning on or after such date, and results
11 from a plan amendment adopted before such
12 date, shall be amortized in equal annual install-
13 ments (until fully amortized) over 40 plan
14 years, beginning with the plan year in which the
15 change arises; and

16 “(D) any change in past service liability
17 which arises during the period of 2 plan years
18 beginning on or after such date, and results
19 from the changing of a group of participants
20 from one benefit level to another benefit level
21 under a schedule of plan benefits which—

22 “(i) was adopted before such date,
23 and

1 “(ii) was effective for any plan partici-
2 pant before the beginning of the first plan
3 year beginning on or after such date,
4 shall be amortized in equal annual installments
5 (until fully amortized) over 40 plan years, be-
6 ginning with the plan year in which the change
7 arises.

8 “(8) SPECIAL RULES RELATING TO CHARGES
9 AND CREDITS TO FUNDING STANDARD ACCOUNT.—
10 For purposes of this part—

11 “(A) WITHDRAWAL LIABILITY.—Any
12 amount received by a multiemployer plan in
13 payment of all or part of an employer’s with-
14 drawal liability under part 1 of subtitle E of
15 title IV shall be considered an amount contrib-
16 uted by the employer to or under the plan. The
17 Secretary of the Treasury may prescribe by reg-
18 ulation additional charges and credits to a mul-
19 tiemployer plan’s funding standard account to
20 the extent necessary to prevent withdrawal li-
21 ability payments from being unduly reflected as
22 advance funding for plan liabilities.

23 “(B) ADJUSTMENTS WHEN A MULTIEM-
24 PLOYER PLAN LEAVES REORGANIZATION.—If a
25 multiemployer plan is not in reorganization in

1 the plan year but was in reorganization in the
2 immediately preceding plan year, any balance in
3 the funding standard account at the close of
4 such immediately preceding plan year—

5 “(i) shall be eliminated by an offset-
6 ting credit or charge (as the case may be),
7 but

8 “(ii) shall be taken into account in
9 subsequent plan years by being amortized
10 in equal annual installments (until fully
11 amortized) over 30 plan years.

12 The preceding sentence shall not apply to the
13 extent of any accumulated funding deficiency
14 under section 4243(a) as of the end of the last
15 plan year that the plan was in reorganization.

16 “(C) PLAN PAYMENTS TO SUPPLEMENTAL
17 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT
18 FUND.—Any amount paid by a plan during a
19 plan year to the Pension Benefit Guaranty Cor-
20 poration pursuant to section 4222 of this Act or
21 to a fund exempt under section 501(c)(22) of
22 the Internal Revenue Code of 1986 pursuant to
23 section 4223 of this Act shall reduce the
24 amount of contributions considered received by
25 the plan for the plan year.

1 “(D) INTERIM WITHDRAWAL LIABILITY
2 PAYMENTS.—Any amount paid by an employer
3 pending a final determination of the employer’s
4 withdrawal liability under part 1 of subtitle E
5 of title IV and subsequently refunded to the
6 employer by the plan shall be charged to the
7 funding standard account in accordance with
8 regulations prescribed by the Secretary of the
9 Treasury.

10 “(E) ELECTION FOR DEFERRAL OF
11 CHARGE FOR PORTION OF NET EXPERIENCE
12 LOSS.—If an election is in effect under section
13 302(b)(7)(F) (as in effect on the day before the
14 date of the enactment of the Pension Protection
15 Act of 2005) for any plan year, the funding
16 standard account shall be charged in the plan
17 year to which the portion of the net experience
18 loss deferred by such election was deferred with
19 the amount so deferred (and paragraph
20 (2)(B)(iv) shall not apply to the amount so
21 charged).

22 “(F) FINANCIAL ASSISTANCE.—Any
23 amount of any financial assistance from the
24 Pension Benefit Guaranty Corporation to any
25 plan, and any repayment of such amount, shall

1 be taken into account under this section and
2 section 412 in such manner as is determined by
3 the Secretary of the Treasury.

4 “(G) SHORT-TERM BENEFITS.—To the ex-
5 tent that any plan amendment increases the un-
6 funded past service liability under the plan by
7 reason of an increase in benefits which are pay-
8 able under the plan during a period that does
9 not exceed 14 years, paragraph (2)(B)(iii) shall
10 be applied separately with respect to such in-
11 crease in unfunded past service liability by sub-
12 stituting the number of years of the period dur-
13 ing which such benefits are payable for ‘15’.

14 “(c) ADDITIONAL RULES.—

15 “(1) DETERMINATIONS TO BE MADE UNDER
16 FUNDING METHOD.—For purposes of this part, nor-
17 mal costs, accrued liability, past service liabilities,
18 and experience gains and losses shall be determined
19 under the funding method used to determine costs
20 under the plan.

21 “(2) VALUATION OF ASSETS.—

22 “(A) IN GENERAL.—For purposes of this
23 part, the value of the plan’s assets shall be de-
24 termined on the basis of any reasonable actu-
25 arial method of valuation which takes into ac-

1 count fair market value and which is permitted
2 under regulations prescribed by the Secretary of
3 the Treasury.

4 “(B) ELECTION WITH RESPECT TO
5 BONDS.—The value of a bond or other evidence
6 of indebtedness which is not in default as to
7 principal or interest may, at the election of the
8 plan administrator, be determined on an amor-
9 tized basis running from initial cost at purchase
10 to par value at maturity or earliest call date.
11 Any election under this subparagraph shall be
12 made at such time and in such manner as the
13 Secretary of the Treasury shall by regulations
14 provide, shall apply to all such evidences of in-
15 debtedness, and may be revoked only with the
16 consent of such Secretary.

17 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
18 SONABLE.—For purposes of this section, all costs, li-
19 abilities, rates of interest, and other factors under
20 the plan shall be determined on the basis of actu-
21 arial assumptions and methods—

22 “(A) each of which is reasonable (taking
23 into account the experience of the plan and rea-
24 sonable expectations), and

1 “(B) which, in combination, offer the actu-
2 ary’s best estimate of anticipated experience
3 under the plan.

4 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
5 PERIENCE GAIN OR LOSS.—For purposes of this sec-
6 tion, if—

7 “(A) a change in benefits under the Social
8 Security Act or in other retirement benefits cre-
9 ated under Federal or State law, or

10 “(B) a change in the definition of the term
11 ‘wages’ under section 3121 of the Internal Rev-
12 enue Code of 1986, or a change in the amount
13 of such wages taken into account under regula-
14 tions prescribed for purposes of section
15 401(a)(5) of such Code,

16 results in an increase or decrease in accrued liability
17 under a plan, such increase or decrease shall be
18 treated as an experience loss or gain.

19 “(5) FULL FUNDING.—If, as of the close of a
20 plan year, a plan would (without regard to this para-
21 graph) have an accumulated funding deficiency in
22 excess of the full funding limitation—

23 “(A) the funding standard account shall be
24 credited with the amount of such excess, and

1 “(B) all amounts described in subpara-
2 graphs (B), (C), and (D) of subsection (b) (2)
3 and subparagraph (B) of subsection (b)(3)
4 which are required to be amortized shall be con-
5 sidered fully amortized for purposes of such
6 subparagraphs.

7 “(6) FULL-FUNDING LIMITATION.—

8 “(A) IN GENERAL.—For purposes of para-
9 graph (5), the term ‘full-funding limitation’
10 means the excess (if any) of—

11 “(i) the accrued liability (including
12 normal cost) under the plan (determined
13 under the entry age normal funding meth-
14 od if such accrued liability cannot be di-
15 rectly calculated under the funding method
16 used for the plan), over

17 “(ii) the lesser of—

18 “(I) the fair market value of the
19 plan’s assets, or

20 “(II) the value of such assets de-
21 termined under paragraph (2).

22 “(B) MINIMUM AMOUNT.—

23 “(i) IN GENERAL.—In no event shall
24 the full-funding limitation determined

1 under subparagraph (A) be less than the
2 excess (if any) of—

3 “(I) 90 percent of the current li-
4 ability of the plan (including the ex-
5 pected increase in current liability due
6 to benefits accruing during the plan
7 year), over

8 “(II) the value of the plan’s as-
9 sets determined under paragraph (2).

10 “(ii) ASSETS.—For purposes of clause
11 (i), assets shall not be reduced by any
12 credit balance in the funding standard ac-
13 count.

14 “(C) FULL FUNDING LIMITATION.—For
15 purposes of this paragraph, unless otherwise
16 provided by the plan, the accrued liability under
17 a multiemployer plan shall not include benefits
18 which are not nonforfeitable under the plan
19 after the termination of the plan (taking into
20 consideration section 411(d)(3) of the Internal
21 Revenue Code of 1986).

22 “(D) CURRENT LIABILITY.—For purposes
23 of this paragraph—

1 “(i) IN GENERAL.—The term ‘current
2 liability’ means all liabilities to employees
3 and their beneficiaries under the plan.

4 “(ii) TREATMENT OF UNPREDICTABLE
5 CONTINGENT EVENT BENEFITS.—For pur-
6 poses of clause (i), any benefit contingent
7 on an event other than—

8 “(I) age, service, compensation,
9 death, or disability, or

10 “(II) an event which is reason-
11 ably and reliably predictable (as deter-
12 mined by the Secretary of the Treas-
13 ury),

14 shall not be taken into account until the
15 event on which the benefit is contingent oc-
16 curs.

17 “(iii) INTEREST RATE USED.—The
18 rate of interest used to determine current
19 liability under this paragraph shall be the
20 rate of interest determined under subpara-
21 graph (E).

22 “(iv) MORTALITY TABLES.—

23 “(I) COMMISSIONERS’ STANDARD
24 TABLE.—In the case of plan years be-
25 ginning before the first plan year to

1 which the first tables prescribed under
2 subclause (II) apply, the mortality
3 table used in determining current li-
4 ability under this paragraph shall be
5 the table prescribed by the Secretary
6 of the Treasury which is based on the
7 prevailing commissioners' standard
8 table (described in section
9 807(d)(5)(A) of the Internal Revenue
10 Code of 1986) used to determine re-
11 serves for group annuity contracts
12 issued on January 1, 1993.

13 “(II) SECRETARIAL AUTHOR-
14 ITY.—The Secretary of the Treasury
15 may by regulation prescribe for plan
16 years beginning after December 31,
17 1999, mortality tables to be used in
18 determining current liability under
19 this subsection. Such tables shall be
20 based upon the actual experience of
21 pension plans and projected trends in
22 such experience. In prescribing such
23 tables, such Secretary shall take into
24 account results of available inde-

1 pendent studies of mortality of indi-
2 viduals covered by pension plans.

3 “(v) SEPARATE MORTALITY TABLES
4 FOR THE DISABLED.—Notwithstanding
5 clause (iv)—

6 “(I) IN GENERAL.—In the case
7 of plan years beginning after Decem-
8 ber 31, 1995, the Secretary of the
9 Treasury shall establish mortality ta-
10 bles which may be used (in lieu of the
11 tables under clause (iv)) to determine
12 current liability under this subsection
13 for individuals who are entitled to
14 benefits under the plan on account of
15 disability. Such Secretary shall estab-
16 lish separate tables for individuals
17 whose disabilities occur in plan years
18 beginning before January 1, 1995,
19 and for individuals whose disabilities
20 occur in plan years beginning on or
21 after such date.

22 “(II) SPECIAL RULE FOR DIS-
23 ABILITIES OCCURRING AFTER 1994.—
24 In the case of disabilities occurring in
25 plan years beginning after December

1 31, 1994, the tables under subclause
2 (I) shall apply only with respect to in-
3 dividuals described in such subclause
4 who are disabled within the meaning
5 of title II of the Social Security Act
6 and the regulations thereunder.

7 “(vi) PERIODIC REVIEW.—The Sec-
8 retary of the Treasury shall periodically (at
9 least every 5 years) review any tables in ef-
10 fect under this subparagraph and shall, to
11 the extent such Secretary determines nec-
12 essary, by regulation update the tables to
13 reflect the actual experience of pension
14 plans and projected trends in such experi-
15 ence.

16 “(E) REQUIRED CHANGE OF INTEREST
17 RATE.—For purposes of determining a plan’s
18 current liability for purposes of this
19 paragraph—

20 “(i) IN GENERAL.—If any rate of in-
21 terest used under the plan under sub-
22 section (b)(6) to determine cost is not
23 within the permissible range, the plan shall
24 establish a new rate of interest within the
25 permissible range.

1 “(ii) PERMISSIBLE RANGE.—For pur-
2 poses of this subparagraph—

3 “(I) IN GENERAL.—Except as
4 provided in subclause (II), the term
5 ‘permissible range’ means a rate of in-
6 terest which is not more than 5 per-
7 cent above, and not more than 10 per-
8 cent below, the weighted average of
9 the rates of interest on 30-year Treas-
10 ury securities during the 4-year period
11 ending on the last day before the be-
12 ginning of the plan year.

13 “(II) SECRETARIAL AUTHOR-
14 ITY.—If the Secretary of the Treasury
15 finds that the lowest rate of interest
16 permissible under subclause (I) is un-
17 reasonably high, such Secretary may
18 prescribe a lower rate of interest, ex-
19 cept that such rate may not be less
20 than 80 percent of the average rate
21 determined under such subclause.

22 “(iii) ASSUMPTIONS.—Notwith-
23 standing paragraph (3)(A), the interest
24 rate used under the plan shall be—

1 “(I) determined without taking
2 into account the experience of the
3 plan and reasonable expectations, but

4 “(II) consistent with the assump-
5 tions which reflect the purchase rates
6 which would be used by insurance
7 companies to satisfy the liabilities
8 under the plan.

9 “(7) ANNUAL VALUATION.—

10 “(A) IN GENERAL.—For purposes of this
11 section, a determination of experience gains and
12 losses and a valuation of the plan’s liability
13 shall be made not less frequently than once
14 every year, except that such determination shall
15 be made more frequently to the extent required
16 in particular cases under regulations prescribed
17 by the Secretary of the Treasury.

18 “(B) VALUATION DATE.—

19 “(i) CURRENT YEAR.—Except as pro-
20 vided in clause (ii), the valuation referred
21 to in subparagraph (A) shall be made as of
22 a date within the plan year to which the
23 valuation refers or within one month prior
24 to the beginning of such year.

1 “(ii) USE OF PRIOR YEAR VALU-
2 ATION.—The valuation referred to in sub-
3 paragraph (A) may be made as of a date
4 within the plan year prior to the year to
5 which the valuation refers if, as of such
6 date, the value of the assets of the plan are
7 not less than 100 percent of the plan’s cur-
8 rent liability (as defined in paragraph
9 (6)(D) without regard to clause (iv) there-
10 of).

11 “(iii) ADJUSTMENTS.—Information
12 under clause (ii) shall, in accordance with
13 regulations, be actuarially adjusted to re-
14 flect significant differences in participants.

15 “(iv) LIMITATION.—A change in fund-
16 ing method to use a prior year valuation,
17 as provided in clause (ii), may not be made
18 unless as of the valuation date within the
19 prior plan year, the value of the assets of
20 the plan are not less than 125 percent of
21 the plan’s current liability (as defined in
22 paragraph (6)(D) without regard to clause
23 (iv) thereof).

24 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
25 DEEMED MADE.—For purposes of this section, any

1 contributions for a plan year made by an employer
2 after the last day of such plan year, but not later
3 than two and one-half months after such day, shall
4 be deemed to have been made on such last day. For
5 purposes of this subparagraph, such two and one-
6 half month period may be extended for not more
7 than six months under regulations prescribed by the
8 Secretary of the Treasury.

9 “(9) INTEREST RULE FOR WAIVERS AND EX-
10 TENSIONS.—The interest rate applicable for any
11 plan year for purposes of computing the amortiza-
12 tion charge described in subsection (b)(2)(C) and in
13 connection with an extension granted under sub-
14 section (d) shall be the greater of—

15 “(A) 150 percent of the Federal mid-term
16 rate (as in effect under section 1274 of the In-
17 ternal Revenue Code of 1986 for the 1st month
18 of such plan year), or

19 “(B) the rate of interest used under the
20 plan for determining costs.

21 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
22 MULTIEMPLOYER PLANS.—In the case of a multiemployer
23 plan—

24 “(1) EXTENSION.—The period of years re-
25 quired to amortize any unfunded liability (described

1 in any clause of subsection (b)(2)(B)) of any multi-
2 employer plan may be extended (in addition to any
3 extension under paragraph (2)) by the Secretary of
4 the Treasury for a period of time (not in excess of
5 5 years) if such Secretary determines that such ex-
6 tension would carry out the purposes of this Act and
7 would provide adequate protection for participants
8 under the plan and their beneficiaries and if he de-
9 termines that the failure to permit such extension
10 would—

11 “(A) result in—

12 “(i) a substantial risk to the voluntary
13 continuation of the plan, or

14 “(ii) a substantial curtailment of pen-
15 sion benefit levels or employee compensa-
16 tion, and

17 “(B) be adverse to the interests of plan
18 participants in the aggregate.

19 “(2) ADDITIONAL EXTENSION.—The period of
20 years required to amortize any unfunded liability
21 (described in any clause of subsection (b)(2)(B)) of
22 any multiemployer plan may be extended (in addi-
23 tion to any extension under paragraph (1)) by the
24 Secretary of the Treasury for a period of time (not

1 in excess of 5 years) if such Secretary determines
2 that—

3 “(A) absent the extension, the plan would
4 have an accumulated funding deficiency in any
5 of the next 10 plan years,

6 “(B) the plan sponsor has adopted a plan
7 to improve the plan’s funding status, and

8 “(C) taking into account the extension, the
9 plan is projected to have sufficient assets to
10 timely pay its expected benefit liabilities and
11 other anticipated expenditures

12 “(3) ADVANCE NOTICE.—

13 “(A) IN GENERAL.—The Secretary of the
14 Treasury shall, before granting an extension
15 under this section, require each applicant to
16 provide evidence satisfactory to such Secretary
17 that the applicant has provided notice of the fil-
18 ing of the application for such extension to each
19 affected party (as defined in section
20 4001(a)(21)) with respect to the affected plan.
21 Such notice shall include a description of the
22 extent to which the plan is funded for benefits
23 which are guaranteed under title IV and for
24 benefit liabilities.

1 “ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER
2 PLANS IN ENDANGERED STATUS OR CRITICAL STATUS
3 “SEC. 305. (a) ANNUAL CERTIFICATION BY PLAN
4 ACTUARY.—

5 “(1) IN GENERAL.—During the 90-day period
6 beginning on first day of each plan year of a multi-
7 employer plan, the plan actuary shall certify to the
8 Secretary of the Treasury whether or not the plan
9 is in endangered status for such plan year and
10 whether or not the plan is in critical status for such
11 plan year.

12 “(2) ACTUARIAL PROJECTIONS OF ASSETS AND
13 LIABILITIES.—

14 “(A) IN GENERAL.—In making the deter-
15 minations under paragraph (1), the plan actu-
16 ary shall make projections under subsections
17 (b)(2) and (c)(2) for the current and succeeding
18 plan years, using reasonable actuarial assump-
19 tions and methods, of the current value of the
20 assets of the plan and the present value of all
21 liabilities to participants and beneficiaries under
22 the plan for the current plan year as of the be-
23 ginning of such year, as based on the actuarial
24 statement prepared for the preceding plan year
25 under section 103(d).

1 “(B) DETERMINATIONS OF FUTURE CON-
2 TRIBUTIONS.—Any such actuarial projection of
3 plan assets shall assume—

4 “(i) reasonably anticipated employer
5 and employee contributions for the current
6 and succeeding plan years, assuming that
7 the terms of the one or more collective bar-
8 gaining agreements pursuant to which the
9 plan is maintained for the current plan
10 year continue in effect for succeeding plan
11 years, or

12 “(ii) that employer and employee con-
13 tributions for the most recent plan year
14 will continue indefinitely, but only if the
15 plan actuary determines there have been
16 no significant demographic changes that
17 would make continued application of such
18 terms unreasonable.

19 “(3) PRESUMED STATUS IN ABSENCE OF TIME-
20 LY ACTUARIAL CERTIFICATION.—If certification
21 under this subsection is not made before the end of
22 the 90-day period specified in paragraph (1), the
23 plan shall be presumed to be in critical status for
24 such plan year until such time as the plan actuary
25 makes a contrary certification.

1 “(4) NOTICE.—In any case in which a multiem-
2 ployer plan is certified to be in endangered status
3 under paragraph (1) or enters into critical status,
4 the plan sponsor shall, not later than 30 days after
5 the date of the certification or entry, provide notifi-
6 cation of the endangered or critical status to the
7 participants and beneficiaries, the bargaining par-
8 ties, the Pension Benefit Guaranty Corporation, the
9 Secretary of the Treasury, and the Secretary of
10 Labor.

11 “(b) FUNDING RULES FOR MULTIEMPLOYER PLANS
12 IN ENDANGERED STATUS.—

13 “(1) IN GENERAL.—In any case in which a
14 multiemployer plan is in endangered status for a
15 plan year and no funding improvement plan under
16 this subsection with respect to such multiemployer
17 plan is in effect for the plan year, the plan sponsor
18 shall, in accordance with this subsection, amend the
19 multiemployer plan to include a funding improve-
20 ment plan upon approval thereof by the bargaining
21 parties under this subsection. The amendment shall
22 be adopted not later than 240 days after the date
23 on which the plan is certified to be in endangered
24 status under subsection (a)(1).

1 “(2) ENDANGERED STATUS.—A multiemployer
2 plan is in endangered status for a plan year if, as
3 determined by the plan actuary under subsection
4 (a)—

5 “(A) the plan’s funded percentage for such
6 plan year is less than 80 percent, or

7 “(B) the plan has an accumulated funding
8 deficiency for such plan year under section 304
9 or is projected to have such an accumulated
10 funding deficiency for any of the 6 succeeding
11 plan years, taking into account any extension of
12 amortization periods under section 304(d).

13 “(3) FUNDING IMPROVEMENT PLAN.—

14 “(A) BENCHMARKS.—A funding improve-
15 ment plan shall consist of amendments to the
16 plan formulated to provide, under reasonable
17 actuarial assumptions, for the attainment, dur-
18 ing the funding improvement period under the
19 funding improvement plan, of the following
20 benchmarks:

21 “(i) INCREASE IN FUNDED PERCENT-
22 AGE.—An increase in the plan’s funded
23 percentage such that—

24 “(I) the difference between 100
25 percent and the plan’s funded per-

1 centage for the last year of the fund-
2 ing improvement period, is not more
3 than

4 “**(II)** $\frac{2}{3}$ of the difference between
5 100 percent and the plan’s funded
6 percentage for the first year of the
7 funding improvement period.

8 “**(ii)** **AVOIDANCE OF ACCUMULATED**
9 **FUNDING DEFICIENCIES.**—No accumulated
10 funding deficiency for any plan year during
11 the funding improvement period (taking
12 into account any extension of amortization
13 periods under section 304(d)).

14 “**(B)** **FUNDING IMPROVEMENT PERIOD.**—
15 The funding improvement period for any fund-
16 ing improvement plan adopted pursuant to this
17 subsection is the 10-year period beginning on
18 the earlier of—

19 “(i) the second anniversary of the
20 date of the adoption of the funding im-
21 provement plan, or

22 “(ii) the first day of the first plan
23 year of the multiemployer plan following
24 the plan year in which occurs the first date
25 after the day of the certification as of

1 which collective bargaining agreements cov-
2 ering on the day of such certification at
3 least 75 percent of active participants in
4 such multiemployer plan have expired.

5 “(C) SPECIAL RULE FOR CERTAIN SERI-
6 OUSLY UNDERFUNDED PLANS.—

7 “(i) In any case in which the funded
8 percentage of a plan for the plan year is—

9 “(I) at least 65 percent but less
10 than 71 percent, or

11 “(II) at least 71 percent but less
12 than 80 percent and the plan actuary
13 certifies within 30 days after the cer-
14 tification under subsection (a)(1) that
15 the plan is not able to attain the in-
16 crease described in subparagraph
17 (A)(i) over the period described in
18 subparagraph (B),

19 subparagraph (A)(i)(II) shall be applied by
20 substituting ‘ $\frac{4}{5}$ ’ for ‘ $\frac{2}{3}$ ’ and subparagraph
21 (B) shall be applied by substituting ‘the
22 15-year period’ for ‘the 10-year period’.

23 “(ii) Clause (i)(II) shall apply—

24 “(I) until the expiration of the
25 latest date on which a collective bar-

1 gaining agreement in effect on the
2 day of certification under such clause
3 and covering on such date at least 75
4 percent of active participants in such
5 plan, and

6 “(II) for each plan year ending
7 after such date for which the plan ac-
8 tuary certifies (at the time of the an-
9 nual certification under subsection
10 (a)(1) for such plan year) that the
11 plan is not able to attain the increase
12 described in subparagraph (A)(i) over
13 the period described in subparagraph
14 (B).

15 “(D) REPORTING.—A summary of any
16 funding improvement plan or modification
17 thereto adopted during any plan year, together
18 with annual updates regarding the funding
19 ratio of the plan, shall be included in the an-
20 nual report for such plan year under section
21 104(a) and in the summary annual report de-
22 scribed in section 104(b)(3).

23 “(4) DEVELOPMENT OF FUNDING IMPROVE-
24 MENT PLAN.—

1 “(A) ACTIONS BY PLAN SPONSOR PENDING
2 APPROVAL.—Pending the approval of a funding
3 improvement plan under this paragraph, the
4 plan sponsor shall take all reasonable actions,
5 consistent with the terms of the plan and appli-
6 cable law, necessary to ensure—

7 “(i) an increase in the plan’s funded
8 percentage, and

9 “(ii) postponement of an accumulated
10 funding deficiency for at least 1 additional
11 plan year.

12 Such actions include applications for extensions
13 of amortization periods under section 304(d),
14 use of the shortfall funding method in making
15 funding standard account computations,
16 amendments to the plan’s benefit structure, re-
17 ductions in future benefit accruals, and other
18 reasonable actions consistent with the terms of
19 the plan and applicable law.

20 “(B) RECOMMENDATIONS BY PLAN SPON-
21 SOR.—

22 “(i) IN GENERAL.—During the period
23 of 90 days following the date on which a
24 multiemployer plan is certified to be in en-
25 dangered status, the plan sponsor shall de-

1 velop and provide to the bargaining parties
2 alternative proposals for revised benefit
3 structures, contribution structures, or
4 both, which, if adopted as amendments to
5 the plan, may be reasonably expected to
6 meet the benchmarks described in para-
7 graph (3)(A). Such proposals shall
8 include—

9 “(I) at least one proposal for re-
10 ductions in the amount of future ben-
11 efit accruals necessary to achieve the
12 benchmarks, assuming no amend-
13 ments increasing contributions under
14 the plan (other than amendments in-
15 creasing contributions necessary to
16 achieve the benchmarks after amend-
17 ments have reduced future benefit ac-
18 cruals to the maximum extent per-
19 mitted by law), and

20 “(II) at least one proposal for in-
21 creases in contributions under the
22 plan necessary to achieve the bench-
23 marks, assuming no amendments re-
24 ducing future benefit accruals under
25 the plan.

1 “(ii) REQUESTS BY BARGAINING PAR-
2 TIES.—Upon the request of any bargaining
3 party who—

4 “(I) employs at least 5 percent of
5 the active participants, or

6 “(II) represents as an employee
7 organization, for purposes of collective
8 bargaining, at least 5 percent of the
9 active participants,

10 the plan sponsor shall provide all such par-
11 ties information as to other combinations
12 of increases in contributions and reduc-
13 tions in future benefit accruals which
14 would result in achieving the benchmarks.

15 “(iii) OTHER INFORMATION.—The
16 plan sponsor may, as it deems appropriate,
17 prepare and provide the bargaining parties
18 with additional information relating to con-
19 tribution structures or benefit structures
20 or other information relevant to the fund-
21 ing improvement plan.

22 “(5) MAINTENANCE OF CONTRIBUTIONS PEND-
23 ING APPROVAL OF FUNDING IMPROVEMENT PLAN.—
24 Pending approval of a funding improvement plan by
25 the bargaining parties with respect to a multiem-

1 ployer plan, the multiemployer plan may not be
2 amended so as to provide—

3 “(A) a reduction in the level of contribu-
4 tions for participants who are not in pay status,

5 “(B) a suspension of contributions with re-
6 spect to any period of service, or

7 “(C) any new direct or indirect exclusion
8 of younger or newly hired employees from plan
9 participation.

10 “(6) BENEFIT RESTRICTIONS PENDING AP-
11 PROVAL OF FUNDING IMPROVEMENT PLAN.—Pend-
12 ing approval of a funding improvement plan by the
13 bargaining parties with respect to a multiemployer
14 plan—

15 “(A) RESTRICTIONS ON LUMP SUM AND
16 SIMILAR DISTRIBUTIONS.—In any case in which
17 the present value of a participant’s accrued
18 benefit under the plan exceeds \$5,000, such
19 benefit may not be distributed as an immediate
20 distribution or in any other accelerated form.

21 “(B) PROHIBITION ON BENEFIT IN-
22 CREASES.—

23 “(i) IN GENERAL.—No amendment of
24 the plan which increases the liabilities of
25 the plan by reason of any increase in bene-

1 fits, any change in the accrual of benefits,
2 or any change in the rate at which benefits
3 become nonforfeitable under the plan may
4 be adopted.

5 “(ii) EXCEPTION.—Clause (i) shall
6 not apply to any plan amendment which is
7 required as a condition of qualification
8 under part I of subchapter D of chapter 1
9 of subtitle A of the Internal Revenue Code
10 of 1986.

11 “(7) DEFAULT CRITICAL STATUS IF NO FUND-
12 ING IMPROVEMENT PLAN ADOPTED.—If no plan
13 amendment adopting a funding improvement plan
14 has been adopted by the end of the 240-day period
15 referred to in subsection (b)(1), the plan enters into
16 critical status as of the first day of the succeeding
17 plan year.

18 “(8) RESTRICTIONS UPON APPROVAL OF FUND-
19 ING IMPROVEMENT PLAN.—Upon adoption of a
20 funding improvement plan with respect to a multi-
21 employer plan, the plan may not be amended—

22 “(A) so as to be inconsistent with the
23 funding improvement plan, or

24 “(B) so as to increase future benefit accru-
25 als, unless the plan actuary certifies in advance

1 that, after taking into account the proposed in-
2 crease, the plan is reasonably expected to meet
3 the the benchmarks described in paragraph
4 (3)(A).

5 “(c) FUNDING RULES FOR MULTIEMPLOYER PLANS
6 IN CRITICAL STATUS.—

7 “(1) IN GENERAL.—In any case in which a
8 multiemployer plan is in critical status for a plan
9 year as described in paragraph (2) (or otherwise en-
10 ters into critical status under this section) and no
11 rehabilitation plan under this subsection with respect
12 to such multiemployer plan is in effect for the plan
13 year, the plan sponsor shall, in accordance with this
14 subsection, amend the multiemployer plan to include
15 a rehabilitation plan under this subsection. The
16 amendment shall be adopted not later than 240 days
17 after the date on which the plan enters into critical
18 status.

19 “(2) CRITICAL STATUS.—A multiemployer plan
20 is in critical status for a plan year if—

21 “(A) the plan is in endangered status for
22 the preceding plan year and the requirements of
23 subsection (b)(1) were not met with respect to
24 the plan for such preceding plan year, or

1 “(B) as determined by the plan actuary
2 under subsection (a), the plan is described in
3 paragraph (3).

4 “(3) CRITICALITY DESCRIPTION.—For purposes
5 of paragraph (2)(B), a plan is described in this
6 paragraph if the plan is described in at least one of
7 the following subparagraphs:

8 “(A) A plan is described in this subpara-
9 graph if, as of the beginning of the current plan
10 year—

11 “(i) the funded percentage of the plan
12 is less than 65 percent, and

13 “(ii) the sum of—

14 “(I) the market value of plan as-
15 sets, plus

16 “(II) the present value of the
17 reasonably anticipated employer and
18 employee contributions for the current
19 plan year and each of the 6 suc-
20 ceeding plan years, assuming that the
21 terms of the one or more collective
22 bargaining agreements pursuant to
23 which the plan is maintained for the
24 current plan year continue in effect
25 for succeeding plan years,

1 is less than the present value of all non-
2 forfeitable benefits for all participants and
3 beneficiaries projected to be payable under
4 the plan during the current plan year and
5 each of the 6 succeeding plan years (plus
6 administrative expenses for such plan
7 years).

8 “(B) A plan is described in this subpara-
9 graph if, as of the beginning of the current plan
10 year, the sum of—

11 “(i) the market value of plan assets,
12 plus

13 “(ii) the present value of the reason-
14 ably anticipated employer and employee
15 contributions for the current plan year and
16 each of the 4 succeeding plan years, as-
17 suming that the terms of the one or more
18 collective bargaining agreements pursuant
19 to which the plan is maintained for the
20 current plan year remain in effect for suc-
21 ceeding plan years,

22 is less than the present value of all nonforfeit-
23 able benefits for all participants and bene-
24 ficiaries projected to be payable under the plan
25 during the current plan year and each of the 4

1 succeeding plan years (plus administrative ex-
2 penses for such plan years).

3 “(C) A plan is described in this subpara-
4 graph if—

5 “(i) as of the beginning of the current
6 plan year, the funded percentage of the
7 plan is less than 65 percent, and

8 “(ii) the plan has an accumulated
9 funding deficiency for the current plan
10 year or is projected to have an accumu-
11 lated funding deficiency for any of the 4
12 succeeding plan years, not taking into ac-
13 count any extension of amortization peri-
14 ods under section 304(d).

15 “(D) A plan is described in this subpara-
16 graph if—

17 “(i)(I) the plan’s normal cost for the
18 current plan year, plus interest (deter-
19 mined at the rate used for determining
20 cost under the plan) for the current plan
21 year on the amount of unfunded benefit li-
22 abilities under the plan as of the last date
23 of the preceding plan year, exceeds

24 “(II) the present value, as of the be-
25 ginning of the current plan year, of the

1 reasonably anticipated employer and em-
2 ployee contributions for the current plan
3 year,

4 “(ii) the present value, as of the be-
5 ginning of the current plan year, of non-
6 forfeitable benefits of inactive participants
7 is greater than the present value, as of the
8 beginning of the current plan year, of non-
9 forfeitable benefits of active participants,
10 and

11 “(iii) the plan is projected to have an
12 accumulated funding deficiency for the
13 current plan year or any of the 4 suc-
14 ceeding plan years, not taking into account
15 any extension of amortization periods
16 under section 304(d).

17 “(E) A plan is described in this subpara-
18 graph if—

19 “(i) the funded percentage of the plan
20 is greater than 65 percent for the current
21 plan year, and

22 “(ii) the plan is projected to have an
23 accumulated funding deficiency during any
24 of the succeeding 3 plan years, not taking

1 into account any extension of amortization
2 periods under section 304(d).

3 “(4) REHABILITATION PLAN.—

4 “(A) IN GENERAL.—A rehabilitation plan
5 shall consist of—

6 “(i) amendments to the plan providing
7 (under reasonable actuarial assumptions)
8 for measures, agreed to by the bargaining
9 parties, to increase contributions, reduce
10 plan expenditures (including plan mergers
11 and consolidations), or reduce future ben-
12 efit accruals, or to take any combination of
13 such actions, determined necessary to
14 cause the plan to cease, during the reha-
15 bilitation period, to be in critical status, or

16 “(ii) reasonable measures to forestall
17 possible insolvency (within the meaning of
18 section 4245) if the plan sponsor deter-
19 mines that, upon exhaustion of all reason-
20 able measures, the plan would not cease
21 during the rehabilitation period to be in
22 critical status.

23 “(B) REHABILITATION PERIOD.—The re-
24 habilitation period for any rehabilitation plan

1 adopted pursuant to this subsection is the 10-
2 year period beginning on the earlier of—

3 “(i) the second anniversary of the
4 date of the adoption of the rehabilitation
5 plan, or

6 “(ii) the first day of the first plan
7 year of the multiemployer plan following
8 the plan year in which occurs the first
9 date, after the date of the plan’s entry into
10 critical status, as of which collective bar-
11 gaining agreements covering at least 75
12 percent of active participants in such mul-
13 tiemployer plan (determined as of such
14 date of entry) have expired.

15 “(C) REPORTING.—A summary of any re-
16 habilitation plan or modification thereto adopt-
17 ed during any plan year, together with annual
18 updates regarding the funding ratio of the plan,
19 shall be included in the annual report for such
20 plan year under section 104(a) and in the sum-
21 mary annual report described in section
22 104(b)(3).

23 “(5) DEVELOPMENT OF REHABILITATION
24 PLAN.—

25 “(A) PROPOSALS BY PLAN SPONSOR.—

1 “(i) IN GENERAL.—Within 90 days
2 after the date of entry into critical status
3 (or the date as of which the requirements
4 of subsection (b)(1) are not met with re-
5 spect to the plan), the plan sponsor shall
6 propose to all bargaining parties a range of
7 alternative schedules of increases in con-
8 tributions and reductions in future benefit
9 accruals that would serve to carry out a re-
10 habilitation plan under this subsection.

11 “(ii) PROPOSAL ASSUMING NO CON-
12 TRIBUTION INCREASES.—Such proposals
13 shall include, as one of the proposed sched-
14 ules, a schedule of those reductions in fu-
15 ture benefit accruals that would be nec-
16 essary to cause the plan to cease to be in
17 critical status if there were no further in-
18 creases in rates of contribution to the plan.

19 “(iii) PROPOSAL WHERE CONTRIBU-
20 TIONS ARE NECESSARY.—If the plan spon-
21 sor determines that the plan will not cease
22 to be in critical status during the rehabili-
23 tation period unless the plan is amended to
24 provide for an increase in contributions,
25 the plan sponsor’s proposals shall include a

1 schedule of those increases in contribution
2 rates that would be necessary to cause the
3 plan to cease to be in critical status if fu-
4 ture benefit accruals were reduced to the
5 maximum extent permitted by law.

6 “(B) REQUESTS FOR ADDITIONAL SCHED-
7 ULES.—Upon the request of any bargaining
8 party who—

9 “(i) employs at least 5 percent of the
10 active participants, or

11 “(ii) represents as an employee orga-
12 nization, for purposes of collective bar-
13 gaining, at least 5 percent of active partici-
14 pants,

15 the plan sponsor shall include among the pro-
16 posed schedules such schedules of increases in
17 contributions and reductions in future benefit
18 accruals as may be specified by the bargaining
19 parties.

20 “(C) SUBSEQUENT AMENDMENTS.—Upon
21 the adoption of a schedule of increases in con-
22 tributions or reductions in future benefit accru-
23 als as part of the rehabilitation plan, the plan
24 sponsor may amend the plan thereafter to up-
25 date the schedule to adjust for any experience

1 of the plan contrary to past actuarial assump-
2 tions, except that such an amendment may be
3 made not more than once in any 3-year period.

4 “(D) ALLOCATION OF REDUCTIONS IN FU-
5 TURE BENEFIT ACCRUALS.—Any schedule con-
6 taining reductions in future benefit accruals
7 forming a part of a rehabilitation plan shall be
8 applicable with respect to any group of active
9 participants who are employed by any bar-
10 gaining party (as an employer obligated to con-
11 tribute under the plan) in proportion to the ex-
12 tent to which increases in contributions under
13 such schedule apply to such bargaining party.

14 “(6) MAINTENANCE OF CONTRIBUTIONS AND
15 RESTRICTIONS ON BENEFITS PENDING ADOPTION OF
16 REHABILITATION PLAN.—The rules of paragraphs
17 (5) and (6) of subsection (b) shall apply for pur-
18 poses of this subsection by substituting the term ‘re-
19 habilitation plan’ for ‘funding improvement plan’.

20 “(7) RESTRICTIONS UPON APPROVAL OF REHA-
21 BILITATION PLAN.—Upon adoption of a rehabilita-
22 tion plan with respect to a multiemployer plan, the
23 plan may not be amended—

24 “(A) so as to be inconsistent with the re-
25 habilitation plan, or

1 “(B) so as to increase future benefit accru-
2 als, unless the plan actuary certifies in advance
3 that, after taking into account the proposed in-
4 crease, the plan is reasonably expected to cease
5 to be in critical status.

6 “(8) IMPLEMENTATION OF DEFAULT SCHED-
7 ULE UPON FAILURE TO ADOPT REHABILITATION
8 PLAN.—If the plan is not amended by the end of the
9 240-day period after entry into critical status to in-
10 clude a rehabilitation plan, the plan sponsor shall
11 amend the plan to implement the schedule required
12 by paragraph (5)(A)(ii).

13 “(9) DEEMED WITHDRAWAL.—Upon the failure
14 of any employer who has an obligation to contribute
15 under the plan to make contributions in compliance
16 with the schedule adopted under paragraph (4) as
17 part of the rehabilitation plan, the failure of the em-
18 ployer may, at the discretion of the plan sponsor, be
19 treated as a withdrawal by the employer from the
20 plan under section 4203 or a partial withdrawal by
21 the employer under section 4205.

22 “(d) DEFINITIONS.—For purposes of this section—

23 “(1) BARGAINING PARTY.—The term ‘bar-
24 gaining party’ means, in connection with a multiem-
25 ployer plan—

1 “(A) an employer who has an obligation to
2 contribute under the plan, and

3 “(B) an employee organization which, for
4 purposes of collective bargaining, represents
5 plan participants employed by such an em-
6 ployer.

7 “(2) FUNDED PERCENTAGE.—The term ‘fund-
8 ed percentage’ means the percentage expressed as a
9 ratio of which—

10 “(A) the numerator of which is the value
11 of the plan’s assets, as determined under sec-
12 tion 304(c)(2), and

13 “(B) the denominator of which is the ac-
14 crued liability of the plan.

15 “(3) ACCUMULATED FUNDING DEFICIENCY.—
16 The term ‘accumulated funding deficiency’ has the
17 meaning provided such term in section 304(a).

18 “(4) ACTIVE PARTICIPANT.—The term ‘active
19 participant’ means, in connection with a multiem-
20 ployer plan, a participant who is in covered service
21 under the plan.

22 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
23 tive participant’ means, in connection with a multi-
24 employer plan, a participant who—

1 “(A) is not in covered service under the
2 plan, and

3 “(B) is in pay status under the plan or has
4 a nonforfeitable right to benefits under the
5 plan.

6 “(6) PAY STATUS.—A person is in ‘pay status’
7 under a multiemployer plan if—

8 “(A) at any time during the current plan
9 year, such person is a participant or beneficiary
10 under the plan and is paid an early, late, nor-
11 mal, or disability retirement benefit under the
12 plan (or a death benefit under the plan related
13 to a retirement benefit), or

14 “(B) to the extent provided in regulations
15 of the Secretary of the Treasury, such person
16 is entitled to such a benefit under the plan.

17 “(7) OBLIGATION TO CONTRIBUTE.—The term
18 ‘obligation to contribute’ has the meaning provided
19 such term under section 4212(a).

20 “(8) ENTRY INTO CRITICAL STATUS.—A plan
21 shall be treated as entering into critical status as of
22 the date that such plan is certified to be in critical
23 status under subsection (a)(1), is presumed to be in
24 critical status under subsection (a)(3), or enters into
25 critical status under subsection (b)(7).”.

1 (b) CONFORMING AMENDMENT.—The table of con-
2 tents in section 1 of such Act (as amended by the pre-
3 ceding provisions of this Act) is amended further by in-
4 serting after the item relating to section 304 the following
5 new item:

“Sec. 305. Additional funding rules for multiemployer plans in endangered sta-
tus or critical status.”.

6 (c) EFFECTIVE DATE.—The amendment made by
7 this section shall apply with respect to plan years begin-
8 ning after 2005.

9 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**
10 **TIEMPLOYER PLANS.**

11 (a) ADVANCE DETERMINATION OF IMPENDING IN-
12 SOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the
13 Employee Retirement Income Security Act of 1974 (29
14 U.S.C. 1426(d)(1)) is amended—

15 (1) by striking “3 plan years” the second place
16 it appears and inserting “5 plan years”; and

17 (2) by adding at the end the following new sen-
18 tence: “If the plan sponsor makes such a determina-
19 tion that the plan will be insolvent in any of the next
20 5 plan years, the plan sponsor shall make the com-
21 parison under this paragraph at least annually until
22 the plan sponsor makes a determination that the
23 plan will not be insolvent in any of the next 5 plan
24 years.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to determinations
3 made in plan years beginning after 2005.

4 **SEC. 204. WITHDRAWAL LIABILITY REFORMS.**

5 (a) REPEAL OF LIMITATION ON WITHDRAWAL LI-
6 ABILITY IN THE EVENT OF CERTAIN SALES OF EM-
7 PLOYER ASSETS TO UNRELATED PARTIES.—

8 (1) IN GENERAL.—Section 4225 of the Em-
9 ployee Retirement Income Security Act of 1974 (29
10 U.S.C. 1405) is repealed.

11 (2) CONFORMING AMENDMENT.—The table of
12 contents in section 1 of such Act is amended by
13 striking the item relating to section 4225.

14 (3) EFFECTIVE DATE.—The amendments made
15 by this section shall apply with respect to sales oc-
16 ccurring on or after January 1, 2006.

17 (b) REPEAL OF LIMITATION TO 20 ANNUAL PAY-
18 MENTS.—

19 (1) IN GENERAL.—Section 4219(c)(1) of such
20 Act (29 U.S.C. 1399(c)(1)) is amended by striking
21 subparagraph (B).

22 (2) EFFECTIVE DATE.—The amendment made
23 by this section shall apply with respect to with-
24 drawals occurring on or after January 1, 2006.

1 (c) WITHDRAWAL LIABILITY CONTINUES IF WORK
2 CONTRACTED OUT.—

3 (1) IN GENERAL.—Clause (i) of section
4 4205(b)(2)(A) of such Act (29 U.S.C.
5 1385(b)(2)(A)) is amended by inserting “or to an-
6 other party or parties” after “to another location”.

7 (2) EFFECTIVE DATE.—The amendment made
8 by this subsection shall apply with respect to work
9 transferred on or after the date of the enactment of
10 this Act.

11 (d) REPEAL OF SPECIAL RULE FOR LONG AND
12 SHORT HAUL TRUCKING INDUSTRY.—

13 (1) IN GENERAL.—Subsection (d) of section
14 4203 of such Act (29 U.S.C. 1383(d)) is repealed.

15 (2) EFFECTIVE DATE.—The repeal under this
16 subsection shall apply with respect to cessations to
17 have obligations to contribute to multiemployer
18 plans and cessations of covered operations under
19 such plans occurring on or after January 1, 2006.

20 (e) APPLICATION OF FORGIVENESS RULE TO PLANS
21 PRIMARILY COVERING EMPLOYEES IN THE BUILDING
22 AND CONSTRUCTION.—

23 (1) IN GENERAL.—Section 4210(b) of such Act
24 (29 U.S.C. 1390(b)) is amended—

25 (A) by striking paragraph (1); and

1 (B) by redesignating paragraphs (2)
2 through (4) as paragraphs (1) through (3), re-
3 spectively.

4 (2) EFFECTIVE DATE.—The amendments made
5 by this subsection shall apply with respect to plan
6 withdrawals occurring on or after January 1, 2006.

7 **SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO**
8 **PROCEDURES APPLICABLE TO DISPUTES IN-**
9 **VOLVING WITHDRAWAL LIABILITY.**

10 (a) IN GENERAL.—Section 4221(f)(1) of the Em-
11 ployee Retirement Income Security Act of 1974 (29
12 U.S.C. 1401(f)(1)) is amended—

13 (1) in subparagraph (A) by inserting “and”
14 after “plan,” and

15 (2) by striking subparagraphs (B) and (C) and
16 inserting the following new subparagraph:

17 “(B) such determination is based in whole
18 or in part on a finding by the plan sponsor
19 under section 4212(c) that a principal purpose
20 of any transaction which occurred at least 5
21 years (2 years in the case of a small employer)
22 before the date of the complete or partial with-
23 drawal was to evade or avoid withdrawal liabil-
24 ity under this subtitle.”

1 (b) SMALL EMPLOYER.—Paragraph (2) of section
2 4221(f) of such Act is amended by adding at the end the
3 following new subparagraph:

4 “(C) SMALL EMPLOYER.—For purposes of
5 paragraph (1)(B)—

6 “(i) IN GENERAL.—The term ‘small
7 employer’ means any employer who (as of
8 immediately before the transaction referred
9 to in paragraph (1)(B))—

10 “(I) employs not more than 500
11 employees, and

12 “(II) is required to make con-
13 tributions to the plan for not more
14 than 250 employees.

15 “(ii) CONTROLLED GROUP.—Any
16 group treated as a single employer under
17 subsection (b), (c), (m), or (o) of section
18 414 of the Internal Revenue Code of 1986
19 shall be treated as a single employer for
20 purposes of this subparagraph.”.

21 (c) ADDITIONAL AMENDMENTS.—

22 (1) Subparagraph (A) of section 4221(f)(2) of
23 such Act (29 U.S.C. 1401(f)(2)) is amended by
24 striking “Notwithstanding” and inserting “In the
25 case of a transaction occurring before January 1,

1 1999, and at least 5 years before the date of the
2 complete or partial withdrawal, notwithstanding”.

3 (2) Section 4221(f)(2)(B) of such Act (29
4 U.S.C. 1401(f)(2)(B)) is amended—

5 (A) by inserting “with respect to with-
6 drawal liability payments” after “determina-
7 tion” the first place it appears, and

8 (B) by striking “any” and inserting “the”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to any employer that receives a
11 notification under section 4219(b)(1) of the Employee Re-
12 tirement Income Security Act of 1974 on or after the date
13 of the enactment of this Act.

14 **Subtitle B—Amendments to**
15 **Internal Revenue Code of 1986**

16 **SEC. 211.** [SEE INTRODUCED BILL, PAGE 200, LINE 8 THROUGH
17 PAGE 251, LINE 15].

18 **TITLE III—OTHER PROVISIONS**

19 **SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINA-**
20 **TION OF LUMP SUM DISTRIBUTIONS.**

21 (a) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
22 COME SECURITY ACT OF 1974.—Subparagraph (B) of
23 section 205(g)(3) of the Employee Retirement Income Se-
24 curity Act of 1974 (29 U.S.C. 1055(g)(3)) is amended to
25 read as follows:

1 “(B) For purposes of subparagraph (A)—

2 “(i) The term ‘applicable mortality table’ means
3 a mortality table, modified as appropriate by the
4 Secretary of the Treasury, based on the mortality
5 table specified for the plan year under section
6 303(h)(3).

7 “(ii) The term ‘applicable interest rate’ means
8 the adjusted first, second, and third segment rates
9 applied under rules similar to the rules of section
10 303(h)(2)(C) for the month before the date of the
11 distribution or such other time as the Secretary of
12 the Treasury may by regulations prescribe.

13 “(iii) For purposes of clause (ii), the adjusted
14 first, second, and third segment rates are the first,
15 second, and third segment rates which would be de-
16 termined under section 303(h)(2)(C) if—

17 “(I) section 303(h)(2)(D)(i) were applied
18 by substituting ‘the yields’ for ‘a 3-year weight-
19 ed average of yields’,

20 “(II) section 303(h)(2)(G)(i)(II) were ap-
21 plied by substituting ‘section
22 205(g)(3)(A)(ii)(II)’ for ‘section
23 302(b)(5)(B)(ii)(II)’, and

1 “(III) the applicable percentage under sec-
 2 tion 303(h)(2)(G) were determined in accord-
 3 ance with the following table:

“In the case of plan years beginning in:	The applicable percentage is:
2006	20 percent
2007	40 percent
2008	60 percent
2009	80 percent.”.

4 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
 5 1986.—[*See introduced bill, page 252, line 19 through page*
 6 *254, line 5*]

7 (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A
 8 plan shall not fail to meet the requirements of section
 9 204(g) of the Employee Retirement Income Security Act
 10 of 1974 solely by reason of the adoption by the plan of
 11 an amendment necessary to meet the requirements of the
 12 amendments made by this section.

13 (d) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply with respect to plan years begin-
 15 ning after 2005.

16 **SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING**
 17 **BENEFIT LIMITATIONS TO LUMP SUM DIS-**
 18 **TRIBUTIONS.**

19 [*See introduced bill, page 254, line 6 through page*
 20 *255, line 7*]

1 **SEC. 303. DISTRIBUTIONS DURING WORKING RETIREMENT.**

2 (a) IN GENERAL.—Subparagraph (A) of section 3(2)
3 of the Employee Retirement Income Security Act of 1974
4 (29 U.S.C. 1002(2)) is amended by adding at the end the
5 following new sentence: “A distribution from a plan, fund,
6 or program shall not be treated as made in a form other
7 than retirement income or as a distribution prior to termi-
8 nation of covered employment solely because such distribu-
9 tion is made to an employee who has attained age 62 and
10 who is not separated from employment at the time of such
11 distribution.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply to distributions in plan years
14 beginning after 2005.

15 **TITLE IV—IMPROVEMENTS IN**
16 **PBGC GUARANTEE PROVISIONS**

17 **SEC. 401. INCREASES IN PBGC PREMIUMS.**

18 (a) FLAT-RATE PREMIUMS.—Section 4006(a)(3) of
19 the Employee Retirement Income Security Act of 1974
20 (29 U.S.C. 1306(a)(3)) is amended—

21 (1) by striking clause (i) of subparagraph (A)
22 and inserting the following:

23 “(i) in the case of a single-employer plan, an
24 amount equal to—

1 “(I) for plan years beginning after Decem-
2 ber 31, 1990, and before January 1, 2006, \$19,
3 or

4 “(II) for plan years beginning after De-
5 cember 31, 2005, the amount determined under
6 subparagraph (F),

7 plus the additional premium (if any) determined
8 under subparagraph (E) for each individual who is
9 a participant in such plan during the plan year;”;
10 and

11 (2) by adding at the end the following new sub-
12 paragraph:

13 “(F)(i) Except as otherwise provided in this subpara-
14 graph, for purposes of determining the annual premium
15 rate payable to the corporation by a single-employer plan
16 for basic benefits guaranteed under this title, the amount
17 determined under this subparagraph is the greater of \$30
18 or the adjusted amount determined under clause (ii).

19 “(ii) For plan years beginning after 2006, the ad-
20 justed amount determined under this clause is the product
21 derived by multiplying \$30 by the ratio of—

22 “(I) the national average wage index (as de-
23 fined in section 209(k)(1) of the Social Security Act)
24 for the first of the 2 calendar years preceding the
25 calendar year in which the plan year begins, to

1 “(II) the national average wage index (as so de-
 2 fined) for 2004,
 3 with such product, if not a multiple of \$1, being rounded
 4 to the next higher multiple of \$1 where such product is
 5 a multiple of \$0.50 but not of \$1, and to the nearest mul-
 6 tiple of \$1 in any other case.

7 “(iii) For purposes of determining the annual pre-
 8 mium rate payable to the corporation by a single-employer
 9 plan for basic benefits guaranteed under this title for any
 10 plan year beginning after 2005 and before 2010—

11 “(I) except as provided in subclause (II), the
 12 premium amount referred to in subparagraph
 13 (A)(i)(II) for any such plan year is the amount set
 14 forth in connection with such plan year in the fol-
 15 lowing table:

“If the plan year begins in:	The amount is:
2006	\$21.20
2007	\$23.40
2008	\$25.60
2009	\$27.80; or

16 “(II) if the plan’s funding target attainment
 17 percentage for the plan year preceding the current
 18 plan year was less than 80 percent, the premium
 19 amount referred to in subparagraph (A)(i)(II) for
 20 such current plan year is the amount set forth in

1 connection with such current plan year in the fol-
 2 lowing table:

“If the plan year begins in:	The amount is:
2006	\$22.67
2007	\$26.33
2008 or 2009	the amount provided under clause (i).

3 “(iv) For purposes of this subparagraph, the term
 4 ‘funding target attainment percentage’ has the meaning
 5 provided such term in section 303(d)(2).”.

6 (b) RISK-BASED PREMIUMS.—

7 (1) CONFORMING AMENDMENTS RELATED TO
 8 FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—

9 Section 4006(a)(3)(E) of such Act (as amended by
 10 paragraph (1)) is amended further by striking
 11 clauses (iv) and (v) and inserting the following:

12 “(iv)(I) For purposes of clause (ii), except as pro-
 13 vided in subclause (II), the term ‘unfunded benefits’
 14 means, for a plan year, the amount which would be the
 15 plan’s funding shortfall (as defined in section 303(c)(4)),
 16 if the value of plan assets of the plan were equal to the
 17 fair market value of such assets and only vested benefits
 18 were taken into account.

19 “(II) The interest rate used in valuing vested benefits
 20 for purposes of subclause (I) shall be equal to the first,
 21 second, or third segment rate which would be determined

1 under section 303(h)(2)(C) if section 303(h)(2)(D)(i) were
2 applied by substituting ‘the yields’ for ‘the 3-year weighted
3 average of yields’, as applicable under rules similar to the
4 rules under section 303(h)(2)(B).”.

5 (2) EFFECTIVE DATE.—The amendments made
6 by paragraph (1) shall apply with respect to plan
7 years beginning after 2005.

8 **TITLE V—DISCLOSURE**

9 **SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICES.**

10 (a) APPLICATION OF PLAN FUNDING NOTICE RE-
11 QUIREMENTS TO ALL DEFINED BENEFIT PLANS.—Sec-
12 tion 101(f) of the Employee Retirement Income Security
13 Act of 1974 (29 U.S.C. 1021(f)) is amended—

14 (1) in the heading, by striking “MULTIEM-
15 PLOYER”;

16 (2) in paragraph (1), by striking “which is a
17 multiemployer plan”; and

18 (3) by striking paragraph (2)(B)(iii) and insert-
19 ing the following:

20 “(iii)(I) in the case of a single-em-
21 ployer plan, a summary of the rules gov-
22 erning termination of single-employer plans
23 under subtitle C of title IV, or

24 “(II) in the case of a multiemployer
25 plan, a summary of the rules governing in-

1 solvent multiemployer plans, including the
2 limitations on benefit payments and any
3 potential benefit reductions and suspen-
4 sions (and the potential effects of such lim-
5 itations, reductions, and suspensions on
6 the plan); and”.

7 (b) INCLUSION OF STATEMENT OF THE RATIO OF IN-
8 ACTIVE PARTICIPANTS TO ACTIVE PARTICIPANTS.—Sec-
9 tion 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B))
10 is amended—

11 (1) in clause (iii)(II) (added by subsection
12 (a)(3) of this section), by striking “and” at the end;

13 (2) in clause (iv), by striking “apply.” and in-
14 serting “apply; and”; and

15 (3) by adding at the end the following new
16 clause:

17 “(v) a statement of the ratio, as of
18 the end of the plan year to which the no-
19 tice relates, of—

20 “(I) the number of participants
21 who are not in covered service under
22 the plan and are in pay status under
23 the plan or have a nonforfeitable right
24 to benefits under the plan, to

1 “(II) the number of participants
2 who are in covered service under the
3 plan.”.

4 (c) COMPARISON OF MONTHLY AVERAGE OF VALUE
5 OF PLAN ASSETS TO PROJECTED CURRENT LIABIL-
6 ITIES.—Section 101(f)(2)(B) of such Act (29 U.S.C.
7 1021(f)(2)(B)) (as amended by the preceding provisions
8 of this section) is amended further—

9 (1) by striking clause (ii) and inserting the fol-
10 lowing:

11 “(ii) a statement of a reasonable esti-
12 mate of—

13 “(I) the value of the plan’s assets
14 for the plan year to which the notice
15 relates,

16 “(II) projected liabilities of the
17 plan for the plan year to which the
18 notice relates, and

19 “(III) the ratio of the estimated
20 amount determined under subclause
21 (I) to the estimated amount deter-
22 mined under subclause (II);”;

23 (2) by adding at the end (after and below
24 clause (v)) the following:

1 “For purposes of determining a plan’s projected
2 liabilities for a plan year under clause (ii)(II),
3 such projected liabilities shall be determined by
4 projecting forward in a reasonable manner to
5 the end of the plan year the liabilities of the
6 plan to participants and beneficiaries as of the
7 first day of the plan year, taking into account
8 any significant events that occur during the
9 plan year and that have a material effect on
10 such liabilities, including any plan amendments
11 in effect for the plan year.”.

12 (d) STATEMENT OF PLAN’S FUNDING POLICY AND
13 METHOD OF ASSET ALLOCATION.—Section 101(f)(2)(B)
14 of such Act (as amended by the preceding provisions of
15 this section) is amended further—

16 (1) in clause (iv), by striking “and” at the end;

17 (2) in clause (v), by striking the period and in-
18 serting “; and”; and

19 (3) by inserting after clause (v) the following
20 new clause:

21 “(vi) a statement setting forth the
22 funding policy of the plan and the asset al-
23 location of investments under the plan (ex-
24 pressed as percentages of total assets) as

1 of the end of the plan year to which the
2 notice relates.”.

3 (e) NOTICE OF FUNDING IMPROVEMENT PLAN OR
4 REHABILITATION PLAN ADOPTED BY MULTIEMPLOYER
5 PLAN.—Section 101(f)(2)(B) of such Act (as amended by
6 the preceding provisions of this section) is amended
7 further—

8 (1) in clause (v), by striking “and” at the end;

9 (2) in clause (vi), by striking the period and in-
10 sserting “; and”; and

11 (3) by inserting after clause (vi) the following
12 new clause:

13 “(vii) a summary of any funding im-
14 provement plan, rehabilitation plan, or
15 modification thereof adopted under section
16 305 during the plan year to which the no-
17 tice relates.”.

18 (f) NOTICE DUE 90 DAYS AFTER PLAN’S VALU-
19 ATION DATE.—

20 (1) IN GENERAL.—Section 101(f)(3) of such
21 Act (29 U.S.C. 1021(f)(3)) is amended by striking
22 “two months after the deadline (including exten-
23 sions) for filing the annual report for the plan year”
24 and inserting “90 days after the end of the plan
25 year”.

1 (2) MODEL NOTICE.—Not later than 180 days
2 after the date of the enactment of this Act, the Sec-
3 retary of Labor shall publish a model version of the
4 notice required by section 101(f) of the Employee
5 Retirement Income Security Act of 1974.

6 (g) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to plan years beginning after De-
8 cember 31, 2005.

9 **SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.**

10 (a) ADDITIONAL ANNUAL REPORTING REQUIRE-
11 MENTS.—Section 103 of the Employee Retirement Income
12 Security Act of 1974 (29 U.S.C. 1023) is amended—

13 (1) in subsection (a)(1)(B), by striking “sub-
14 sections (d) and (e)” and inserting “subsections (d),
15 (e), and (f)”; and

16 (2) by adding at the end the following new sub-
17 section:

18 “(f)(1) With respect to any defined benefit plan, an
19 annual report under this section for a plan year shall in-
20 clude the following:

21 “(A) The ratio, as of the end of such plan year,
22 of—

23 “(i) the number of participants who, as of
24 the end of such plan year, are not in covered
25 service under the plan and are in pay status

1 under the plan or have a nonforfeitable right to
2 benefits under the plan, to

3 “(ii) the number of participants who are in
4 covered service under the plan as of the end of
5 such plan year.

6 “(B) In any case in which any liabilities to par-
7 ticipants or their beneficiaries under such plan as of
8 the end of such plan year consist (in whole or in
9 part) of liabilities to such participants and bene-
10 ficiaries borne by 2 or more pension plans as of im-
11 mediately before such plan year, the funded ratio of
12 each of such 2 or more pension plans as of imme-
13 diately before such plan year and the funded ratio
14 of the plan with respect to which the annual report
15 is filed as of the end of such plan year.

16 “(C) For purposes of this paragraph, the term
17 ‘funded ratio’ means, in connection with a plan, the
18 percentage which—

19 “(i) the value of the plan’s assets is of

20 “(ii) the liabilities to participants and
21 beneficiaries under the plan.

22 “(2) With respect to any defined benefit plan which
23 is a multiemployer plan, an annual report under this sec-
24 tion for a plan year shall include the following:

1 “(A) The number of employers obligated to con-
2 tribute to the plan as of the end of such plan year.

3 “(B) The number of participants under the
4 plan on whose behalf no employer contributions have
5 been made to the plan for such plan year. For pur-
6 poses of this subparagraph, the term ‘employer con-
7 tribution’ means, in connection with a participant, a
8 contribution made by an employer as an employer of
9 such participant.”.

10 (b) ADDITIONAL INFORMATION IN ANNUAL ACTU-
11 ARIAL STATEMENT REGARDING PLAN RETIREMENT PRO-
12 JECTIONS.—Section 103(d) of such Act (29 U.S.C.
13 1023(d)) is amended—

14 (1) by redesignating paragraphs (12) and (13)
15 as paragraphs (13) and (14), respectively; and

16 (2) by inserting after paragraph (11) the fol-
17 lowing new paragraph:

18 “(12) A statement explaining the actuarial as-
19 sumptions and methods used in projecting future re-
20 tirements and forms of benefit distributions under
21 the plan.”.

22 (c) FILING AFTER 275 DAYS AFTER PLAN YEAR
23 ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of
24 such Act (29 U.S.C. 1024(a)(1)) is amended by inserting
25 after the first sentence the following new sentence: “In

1 the case of a pension plan, the Secretary may extend the
2 deadline for filing the annual report for any plan year past
3 275 days after the close of the plan year only on a case
4 by case basis and only in cases of hardship, in accordance
5 with regulations which shall be prescribed by the Sec-
6 retary.”.

7 (d) INTERNET DISPLAY OF INFORMATION.—Section
8 104(b) of such Act (29 U.S.C. 1024(b)) is amended by
9 adding at the end the following:

10 “(2) Identification and basic plan information and ac-
11 tual information included in the annual report for any
12 plan year shall be filed with the Secretary in an electronic
13 format which accommodates display on the Internet, in ac-
14 cordance with regulations which shall be prescribed by the
15 Secretary. The Secretary shall provide for display of such
16 information included in the annual report, within 90 days
17 after the date of the filing of the annual report, on a
18 website maintained by the Secretary on the Internet and
19 other appropriate media. Such information shall also be
20 displayed on any website maintained by the plan sponsor
21 (or by the plan administrator on behalf of the plan spon-
22 sor) on the Internet, in accordance with regulations which
23 shall be prescribed by the Secretary.”.

24 (e) SUMMARY ANNUAL REPORT FILED WITHIN 15
25 DAYS AFTER DEADLINE FOR FILING OF ANNUAL RE-

1 PORT.—Section 104(b)(3) of such Act (29 U.S.C.
2 1024(b)(3)) is amended—

3 (1) by striking “Within 210 days after the close
4 of the fiscal year,” and inserting “Within 15 busi-
5 ness days after the due date under subsection (a)(1)
6 for the filing of the annual report for the fiscal year
7 of the plan”; and

8 (2) by striking “the latest” and inserting
9 “such”.

10 (f) DISCLOSURE OF PLAN ASSETS AND LIABILITIES
11 IN SUMMARY ANNUAL REPORT.—

12 (1) IN GENERAL.—Section 104(b)(3) of such
13 Act (as amended by subsection (a)) is amended
14 further—

15 (A) by inserting “(A)” after “(3)”; and

16 (B) by adding at the end the following:

17 “(B) The material provided pursuant to subpara-
18 graph (A) to summarize the latest annual report shall be
19 written in a manner calculated to be understood by the
20 average plan participant and shall set forth the total as-
21 sets and liabilities of the plan for the plan year for which
22 the latest annual report was filed and for each of the 2
23 preceding plan years, as reported in the annual report for
24 each such plan year under this section.”.

1 (g) INFORMATION MADE AVAILABLE TO PARTICI-
2 PANTS, BENEFICIARIES, AND EMPLOYERS WITH RESPECT
3 TO MULTIEMPLOYER PLANS.—

4 (1) IN GENERAL.—Section 101 of the Employee
5 Retirement Income Security Act of 1974 (29 U.S.C.
6 1021) (as amended by section 103(b)(2)(A)) is fur-
7 ther amended—

8 (A) by redesignating subsection (k) as sub-
9 section (l); and

10 (B) by inserting after subsection (j) the
11 following new subsection:

12 “(k) MULTIEMPLOYER PLAN INFORMATION MADE
13 AVAILABLE ON REQUEST.—

14 “(1) IN GENERAL.—Each administrator of a
15 multiemployer plan shall furnish to any plan partici-
16 pant or beneficiary or any employer having an obli-
17 gation to contribute to the plan, who so requests in
18 writing—

19 “(A) a copy of any actuarial report re-
20 ceived by the plan for any plan year which has
21 been in receipt by the plan for at least 30 days,
22 and

23 “(B) a copy of any financial report pre-
24 pared for the plan by any plan investment man-
25 ager or advisor or other person who is a plan

1 fiduciary which has been in receipt by the plan
2 for at least 30 days.

3 “(2) COMPLIANCE.—Information required to be
4 provided under paragraph (1) —

5 “(A) shall be provided to the requesting
6 participant, beneficiary, or employer within 30
7 days after the request in a form and manner
8 prescribed in regulations of the Secretary, and

9 “(B) may be provided in written, elec-
10 tronic, or other appropriate form to the extent
11 such form is reasonably accessible to persons to
12 whom the information is required to be pro-
13 vided.

14 “(3) LIMITATIONS.—In no case shall a partici-
15 pant, beneficiary, or employer be entitled under this
16 subsection to receive more than one copy of any re-
17 port described in paragraph (1) during any one 12-
18 month period. The administrator may make a rea-
19 sonable charge to cover copying, mailing, and other
20 costs of furnishing copies of information pursuant to
21 paragraph (1). The Secretary may by regulations
22 prescribe the maximum amount which will constitute
23 a reasonable charge under the preceding sentence.”.

24 (2) ENFORCEMENT.—Section 502(c)(4) of such
25 Act (29 U.S.C. 1132(c)(4)) (as amended by section

1 103(b)(2)(B)) is further amended by striking “sec-
2 tions 101(j) and 302(b)(7)(F)(iv)” and inserting
3 “sections 101(j), 101(k), and 302(b)(7)(F)(iv)”.

4 (3) REGULATIONS.—The Secretary shall pre-
5 scribe regulations under section 101(k)(2) of the
6 Employee Retirement Income Security Act of 1974
7 (added by paragraph (1) of this subsection) not later
8 than 90 days after the date of the enactment of this
9 Act.

10 (h) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY
11 TO MULTIEMPLOYER PLANS.—

12 (1) IN GENERAL.—Section 101 of such Act (as
13 amended by subsection (d) of this section) is further
14 amended—

15 (A) by redesignating subsection (l) as sub-
16 section (m); and

17 (B) by inserting after subsection (k) the
18 following new subsection:

19 “(l) NOTICE OF POTENTIAL WITHDRAWAL LIABIL-
20 ITY.—

21 “(1) IN GENERAL.—The plan sponsor or ad-
22 ministrator of a multiemployer plan shall furnish to
23 any employer who has an obligation to contribute
24 under the plan and who so requests in writing notice
25 of—

1 “(A) the amount which would be the
2 amount of such employer’s withdrawal liability
3 under part 1 of subtitle E of title IV if such
4 employer withdrew on the last day of the plan
5 year preceding the date of the request, and

6 “(B) the average increase, per participant
7 under the plan, in accrued liabilities under the
8 plan as of the end of such plan year to partici-
9 pants under such plan on whose behalf no em-
10 ployer contributions are payable (or their bene-
11 ficiaries), which would be attributable to such a
12 withdrawal by such employer.

13 For purposes of subparagraph (B), the term ‘em-
14 ployer contribution’ means, in connection with a par-
15 ticipant, a contribution made by an employer as an
16 employer of such participant.

17 “(2) COMPLIANCE.—Any notice required to be
18 provided under paragraph (1)—

19 “(A) shall be provided to the requesting
20 employer within 180 days after the request in
21 a form and manner prescribed in regulations of
22 the Secretary, and

23 “(B) may be provided in written, elec-
24 tronic, or other appropriate form to the extent
25 such form is reasonably accessible to employers

1 to whom the information is required to be pro-
2 vided.

3 “(3) LIMITATIONS.—In no case shall an em-
4 ployer be entitled under this subsection to receive
5 more than one notice described in paragraph (1)
6 during any one 12-month period. The person re-
7 quired to provide such notice may make a reasonable
8 charge to cover copying, mailing, and other costs of
9 furnishing such notice pursuant to paragraph (1).
10 The Secretary may by regulations prescribe the max-
11 imum amount which will constitute a reasonable
12 charge under the preceding sentence.”.

13 (2) ENFORCEMENT.—Section 502(c)(4) of such
14 Act (29 U.S.C. 1132(c)(4)) (as amended by para-
15 graph (1)) is further amended by striking “sections
16 101(j), 101(k), and 302(b)(7)(F)(iv)” and inserting
17 “sections 101(j), 101(k), 101(l), and
18 302(b)(7)(F)(iv)”.

19 (i) MODEL FORM.—Not later than 180 days after the
20 date of the enactment of this Act, the Secretary of Labor
21 shall publish a model form for providing the statements,
22 schedules, and other material required to be provided
23 under section 104(b)(3) of the Employee Retirement In-
24 come Security Act of 1974, as amended by this section.

1 (j) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning after De-
3 cember 31, 2005.

4 **SEC. 503. SECTION 4010 FILINGS WITH THE PBGC.**

5 (a) CHANGE IN CRITERIA FOR PERSONS REQUIRED
6 TO PROVIDE INFORMATION TO PBGC.—Section 4010(b)
7 of the Employee Retirement Income Security Act of 1974
8 (29 U.S.C. 1310(b)) is amended by striking paragraph
9 (1), by redesignating paragraphs (2) and (3) as para-
10 graphs (3) and (4), respectively, and by inserting before
11 paragraph (3) (as so redesignated) the following new para-
12 graphs:

13 “(1) the aggregate funding target attainment
14 percentage of the plan (as defined in subsection
15 (d)(2)) is less than 60 percent;

16 “(2)(A) the aggregate funding target attain-
17 ment percentage of the plan (as defined in sub-
18 section (d)(2)) is less than 75 percent, and

19 “(B) the plan sponsor is in an industry with re-
20 spect to which the corporation determines that there
21 is substantial unemployment or underemployment
22 and the sales and profits are depressed or declining;
23 ”.

24 (b) NOTICE TO PARTICIPANTS AND BENE-
25 FICIARIES.—Section 4010 of the Employee Retirement In-

1 come Security Act of 1974 (29 U.S.C. 1310) is amended
2 by adding at the end the following new subsection:

3 “(d) NOTICE TO PARTICIPANTS AND BENE-
4 FICIARIES.—

5 “(1) IN GENERAL.—Not later than 90 days
6 after the submission by any person to the corpora-
7 tion of information or documentary material with re-
8 spect to any plan pursuant to subsection (a), such
9 person shall provide notice of such submission to
10 each participant and beneficiary under the plan (and
11 under all plans maintained by members of the con-
12 trolled group of each contributing sponsor of the
13 plan). Such notice shall also set forth—

14 “(A) the number of single-employer plans
15 covered by this title which are in at-risk status
16 and are maintained by contributing sponsors of
17 such plan (and by members of their controlled
18 groups) with respect to which the funding tar-
19 get attainment percentage for the preceding
20 plan year of each plan is less than 60 percent;

21 “(B) the value of the assets of each of the
22 plans described in subparagraph (A) for the
23 plan year, the funding target for each of such
24 plans for the plan year, and the funding target

1 attainment percentage of each of such plans for
2 the plan year; and

3 “(C) taking into account all single-em-
4 ployer plans maintained by the contributing
5 sponsor and the members of its controlled
6 group as of the end of such plan year—

7 “(i) the aggregate total of the values
8 of plan assets of such plans as of the end
9 of such plan year,

10 “(ii) the aggregate total of the fund-
11 ing targets of such plans, as of the end of
12 such plan year, taking into account only
13 benefits to which participants and bene-
14 ficiaries have a nonforfeitable right, and

15 “(iii) the aggregate funding targets
16 attainment percentage with respect to the
17 contributing sponsor for the preceding plan
18 year.

19 “(2) DEFINITIONS.—For purposes of this
20 subsection—

21 “(A) VALUE OF PLAN ASSETS.—The term
22 ‘value of plan assets’ means the value of plan
23 assets, as determined under section 303(g)(3).

1 “(B) FUNDING TARGET.—The term ‘fund-
2 ing target’ has the meaning provided under sec-
3 tion 303(d)(1).

4 “(C) FUNDING TARGET ATTAINMENT PER-
5 CENTAGE.—The term ‘funding target attain-
6 ment percentage’ has the meaning provided in
7 section 303(d)(2).

8 “(D) AGGREGATE FUNDING TARGETS AT-
9 TAINMENT PERCENTAGE.—The term ‘aggregate
10 funding targets attainment percentage’ with re-
11 spect to a contributing sponsor for a plan year
12 is the percentage, taking into account all plans
13 maintained by the contributing sponsor and the
14 members of its controlled group as of the end
15 of such plan year, which

16 “(i) the aggregate total of the values
17 of plan assets, as of the end of such plan
18 year, of such plans, is of

19 “(ii) the aggregate total of the fund-
20 ing targets of such plans, as of the end of
21 such plan year, taking into account only
22 benefits to which participants and bene-
23 ficiaries have a nonforfeitable right.

1 “(E) AT-RISK STATUS.—The term ‘at-risk
2 status’ has the meaning provided in section
3 303(i)(3).

4 “(3) COMPLIANCE.—

5 “(A) IN GENERAL.—Any notice required to
6 be provided under paragraph (1) may be pro-
7 vided in written, electronic, or other appropriate
8 form to the extent such form is reasonably ac-
9 cessible to individuals to whom the information
10 is required to be provided.

11 “(B) LIMITATIONS.—In no case shall a
12 participant or beneficiary be entitled under this
13 subsection to receive more than one notice de-
14 scribed in paragraph (1) during any one 12-
15 month period. The person required to provide
16 such notice may make a reasonable charge to
17 cover copying, mailing, and other costs of fur-
18 nishing such notice pursuant to paragraph (1).
19 The corporation may by regulations prescribe
20 the maximum amount which will constitute a
21 reasonable charge under the preceding sentence.

22 “(4) NOTICE TO CONGRESS.—Concurrent with
23 the provision of any notice under paragraph (1),
24 such person shall provide such notice to the Com-
25 mittee on Education and the Workforce of the

1 House of Representatives and the Committee on
2 Health, Education, Labor, and Pensions of the Sen-
3 ate, which shall be treated as materials provided in
4 executive session.”.

5 (c) EFFECTIVE DATE.—The amendment made by
6 this section shall apply with respect to plan years begin-
7 ning after 2006.

8 **TITLE VI—INVESTMENT ADVICE**

9 **SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT IN-** 10 **COME SECURITY ACT OF 1974 PROVIDING** 11 **PROHIBITED TRANSACTION EXEMPTION FOR** 12 **PROVISION OF INVESTMENT ADVICE.**

13 (a) EXEMPTION FROM PROHIBITED TRANS-
14 ACTIONS.—Section 408(b) of the Employee Retirement
15 Income Security Act of 1974 (29 U.S.C. 1108(b)) is
16 amended by adding at the end the following new para-
17 graph:

18 “(14)(A) Any transaction described in subpara-
19 graph (B) in connection with the provision of invest-
20 ment advice described in section 3(21)(A)(ii), in any
21 case in which—

22 “(i) the investment of assets of the plan is
23 subject to the direction of plan participants or
24 beneficiaries,

1 “(ii) the advice is provided to the plan or
2 a participant or beneficiary of the plan by a fi-
3 duciary adviser in connection with any sale, ac-
4 quisition, or holding of a security or other prop-
5 erty for purposes of investment of plan assets,
6 and

7 “(iii) the requirements of subsection (g)
8 are met in connection with the provision of the
9 advice.

10 “(B) The transactions described in this sub-
11 paragraph are the following:

12 “(i) the provision of the advice to the
13 plan, participant, or beneficiary;

14 “(ii) the sale, acquisition, or holding
15 of a security or other property (including
16 any lending of money or other extension of
17 credit associated with the sale, acquisition,
18 or holding of a security or other property)
19 pursuant to the advice; and

20 “(iii) the direct or indirect receipt of
21 fees or other compensation by the fiduciary
22 adviser or an affiliate thereof (or any em-
23 ployee, agent, or registered representative
24 of the fiduciary adviser or affiliate) in con-
25 nection with the provision of the advice or

1 in connection with a sale, acquisition, or
2 holding of a security or other property pur-
3 suant to the advice.”.

4 (b) REQUIREMENTS.—Section 408 of such Act is
5 amended further by adding at the end the following new
6 subsection:

7 “(g) REQUIREMENTS RELATING TO PROVISION OF
8 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

9 “(1) IN GENERAL.—The requirements of this
10 subsection are met in connection with the provision
11 of investment advice referred to in section
12 3(21)(A)(ii), provided to an employee benefit plan or
13 a participant or beneficiary of an employee benefit
14 plan by a fiduciary adviser with respect to the plan
15 in connection with any sale, acquisition, or holding
16 of a security or other property for purposes of in-
17 vestment of amounts held by the plan, if—

18 “(A) in the case of the initial provision of
19 the advice with regard to the security or other
20 property by the fiduciary adviser to the plan,
21 participant, or beneficiary, the fiduciary adviser
22 provides to the recipient of the advice, at a time
23 reasonably contemporaneous with the initial
24 provision of the advice, a written notification

1 (which may consist of notification by means of
2 electronic communication)—

3 “(i) of all fees or other compensation
4 relating to the advice that the fiduciary ad-
5 viser or any affiliate thereof is to receive
6 (including compensation provided by any
7 third party) in connection with the provi-
8 sion of the advice or in connection with the
9 sale, acquisition, or holding of the security
10 or other property,

11 “(ii) of any material affiliation or con-
12 tractual relationship of the fiduciary ad-
13 viser or affiliates thereof in the security or
14 other property,

15 “(iii) of any limitation placed on the
16 scope of the investment advice to be pro-
17 vided by the fiduciary adviser with respect
18 to any such sale, acquisition, or holding of
19 a security or other property,

20 “(iv) of the types of services provided
21 by the fiduciary adviser in connection with
22 the provision of investment advice by the
23 fiduciary adviser,

1 “(v) that the adviser is acting as a fi-
2 duciary of the plan in connection with the
3 provision of the advice, and

4 “(vi) that a recipient of the advice
5 may separately arrange for the provision of
6 advice by another adviser, that could have
7 no material affiliation with and receive no
8 fees or other compensation in connection
9 with the security or other property,

10 “(B) the fiduciary adviser provides appro-
11 priate disclosure, in connection with the sale,
12 acquisition, or holding of the security or other
13 property, in accordance with all applicable secu-
14 rities laws,

15 “(C) the sale, acquisition, or holding oc-
16 curs solely at the direction of the recipient of
17 the advice,

18 “(D) the compensation received by the fi-
19 duciary adviser and affiliates thereof in connec-
20 tion with the sale, acquisition, or holding of the
21 security or other property is reasonable, and

22 “(E) the terms of the sale, acquisition, or
23 holding of the security or other property are at
24 least as favorable to the plan as an arm’s
25 length transaction would be.

1 “(2) STANDARDS FOR PRESENTATION OF IN-
2 FORMATION.—

3 “(A) IN GENERAL.—The notification re-
4 quired to be provided to participants and bene-
5 ficiaries under paragraph (1)(A) shall be writ-
6 ten in a clear and conspicuous manner and in
7 a manner calculated to be understood by the av-
8 erage plan participant and shall be sufficiently
9 accurate and comprehensive to reasonably ap-
10 prise such participants and beneficiaries of the
11 information required to be provided in the noti-
12 fication.

13 “(B) MODEL FORM FOR DISCLOSURE OF
14 FEES AND OTHER COMPENSATION.—The Sec-
15 retary shall issue a model form for the disclo-
16 sure of fees and other compensation required in
17 paragraph (1)(A)(i) which meets the require-
18 ments of subparagraph (A).

19 “(3) EXEMPTION CONDITIONED ON MAKING RE-
20 QUIRED INFORMATION AVAILABLE ANNUALLY, ON
21 REQUEST, AND IN THE EVENT OF MATERIAL
22 CHANGE.—The requirements of paragraph (1)(A)
23 shall be deemed not to have been met in connection
24 with the initial or any subsequent provision of advice
25 described in paragraph (1) to the plan, participant,

1 or beneficiary if, at any time during the provision of
2 advisory services to the plan, participant, or bene-
3 ficiary, the fiduciary adviser fails to maintain the in-
4 formation described in clauses (i) through (iv) of
5 subparagraph (A) in currently accurate form and in
6 the manner described in paragraph (2) or fails—

7 “(A) to provide, without charge, such cur-
8 rently accurate information to the recipient of
9 the advice no less than annually,

10 “(B) to make such currently accurate in-
11 formation available, upon request and without
12 charge, to the recipient of the advice, or

13 “(C) in the event of a material change to
14 the information described in clauses (i) through
15 (iv) of paragraph (1)(A), to provide, without
16 charge, such currently accurate information to
17 the recipient of the advice at a time reasonably
18 contemporaneous to the material change in in-
19 formation.

20 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
21 OF COMPLIANCE.—A fiduciary adviser referred to in
22 paragraph (1) who has provided advice referred to in
23 such paragraph shall, for a period of not less than
24 6 years after the provision of the advice, maintain
25 any records necessary for determining whether the

1 requirements of the preceding provisions of this sub-
2 section and of subsection (b)(14) have been met. A
3 transaction prohibited under section 406 shall not be
4 considered to have occurred solely because the
5 records are lost or destroyed prior to the end of the
6 6-year period due to circumstances beyond the con-
7 trol of the fiduciary adviser.

8 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
9 TAIN OTHER FIDUCIARIES.—

10 “(A) IN GENERAL.—Subject to subpara-
11 graph (B), a plan sponsor or other person who
12 is a fiduciary (other than a fiduciary adviser)
13 shall not be treated as failing to meet the re-
14 quirements of this part solely by reason of the
15 provision of investment advice referred to in
16 section 3(21)(A)(ii) (or solely by reason of con-
17 tracting for or otherwise arranging for the pro-
18 vision of the advice), if—

19 “(i) the advice is provided by a fidu-
20 ciary adviser pursuant to an arrangement
21 between the plan sponsor or other fidu-
22 ciary and the fiduciary adviser for the pro-
23 vision by the fiduciary adviser of invest-
24 ment advice referred to in such section,

1 “(ii) the terms of the arrangement re-
2 quire compliance by the fiduciary adviser
3 with the requirements of this subsection,
4 and

5 “(iii) the terms of the arrangement
6 include a written acknowledgment by the
7 fiduciary adviser that the fiduciary adviser
8 is a fiduciary of the plan with respect to
9 the provision of the advice.

10 “(B) CONTINUED DUTY OF PRUDENT SE-
11 LECTION OF ADVISER AND PERIODIC REVIEW.—
12 Nothing in subparagraph (A) shall be construed
13 to exempt a plan sponsor or other person who
14 is a fiduciary from any requirement of this part
15 for the prudent selection and periodic review of
16 a fiduciary adviser with whom the plan sponsor
17 or other person enters into an arrangement for
18 the provision of advice referred to in section
19 3(21)(A)(ii). The plan sponsor or other person
20 who is a fiduciary has no duty under this part
21 to monitor the specific investment advice given
22 by the fiduciary adviser to any particular recipi-
23 ent of the advice.

24 “(C) AVAILABILITY OF PLAN ASSETS FOR
25 PAYMENT FOR ADVICE.—Nothing in this part

1 shall be construed to preclude the use of plan
2 assets to pay for reasonable expenses in pro-
3 viding investment advice referred to in section
4 3(21)(A)(ii).

5 “(6) DEFINITIONS.—For purposes of this sub-
6 section and subsection (b)(14)—

7 “(A) FIDUCIARY ADVISER.—The term ‘fi-
8 duciary adviser’ means, with respect to a plan,
9 a person who is a fiduciary of the plan by rea-
10 son of the provision of investment advice by the
11 person to the plan or to a participant or bene-
12 ficiary and who is—

13 “(i) registered as an investment ad-
14 viser under the Investment Advisers Act of
15 1940 (15 U.S.C. 80b–1 et seq.) or under
16 the laws of the State in which the fiduciary
17 maintains its principal office and place of
18 business,

19 “(ii) a bank or similar financial insti-
20 tution referred to in section 408(b)(4) or a
21 savings association (as defined in section
22 3(b)(1) of the Federal Deposit Insurance
23 Act (12 U.S.C. 1813(b)(1))), but only if
24 the advice is provided through a trust de-
25 partment of the bank or similar financial

1 institution or savings association which is
2 subject to periodic examination and review
3 by Federal or State banking authorities,

4 “(iii) an insurance company qualified
5 to do business under the laws of a State,

6 “(iv) a person registered as a broker
7 or dealer under the Securities Exchange
8 Act of 1934 (15 U.S.C. 78a et seq.),

9 “(v) an affiliate of a person described
10 in any of clauses (i) through (iv), or

11 “(vi) an employee, agent, or registered
12 representative of a person described in any
13 of clauses (i) through (v) who satisfies the
14 requirements of applicable insurance,
15 banking, and securities laws relating to the
16 provision of the advice.

17 “(B) AFFILIATE.—The term ‘affiliate’ of
18 another entity means an affiliated person of the
19 entity (as defined in section 2(a)(3) of the In-
20 vestment Company Act of 1940 (15 U.S.C.
21 80a-2(a)(3))).

22 “(C) REGISTERED REPRESENTATIVE.—
23 The term ‘registered representative’ of another
24 entity means a person described in section
25 3(a)(18) of the Securities Exchange Act of

1 1934 (15 U.S.C. 78c(a)(18)) (substituting the
2 entity for the broker or dealer referred to in
3 such section) or a person described in section
4 202(a)(17) of the Investment Advisers Act of
5 1940 (15 U.S.C. 80b-2(a)(17)) (substituting
6 the entity for the investment adviser referred to
7 in such section).”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply with respect to advice referred to
10 in section 3(21)(A)(ii) of the Employee Retirement In-
11 come Security Act of 1974 provided on or after January
12 1, 2006.

13 **SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF**
14 **1986 PROVIDING PROHIBITED TRANSACTION**
15 **EXEMPTION FOR PROVISION OF INVESTMENT**
16 **ADVICE.**

17 [See introduced bill, page 287, line 15 through page
18 298, line 23]

19 **TITLE VII—BENEFIT ACCRUAL**
20 **STANDARDS**

21 **SEC. 701. IMPROVEMENTS IN BENEFIT ACCRUAL STAND-**
22 **ARDS.**

23 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
24 INCOME SECURITY ACT OF 1974.—

1 (1) RULES RELATING TO REDUCTION IN AC-
2 CRUED BENEFITS BECAUSE OF ATTAINMENT OF ANY
3 AGE.—Section 204(b)(1)(H) of the Employee Retirement
4 Income Security Act of 1974 (29 U.S.C.
5 1054(b)(1)(H)) is amended by adding at the end the
6 following new clauses:

7 “(vii)(I) A plan shall not be treated as failing to meet
8 the requirements of clause (i) if a participant’s entire ac-
9 crued benefit, as determined as of any date under the for-
10 mula for determining benefits as set forth in the text of
11 the plan documents, would be equal to or greater than
12 that of any similarly situated, younger individual.

13 “(II) For purposes of this clause, an individual is
14 similarly situated to a participant if such individual is
15 identical to such participant in every respect (including pe-
16 riod of service, compensation, position, date of hire, work
17 history, and any other respect) except for age.

18 “(III) In determining the entire accrued benefit for
19 purposes of this clause, the subsidized portion of any early
20 retirement benefit (including any early retirement subsidy
21 that is fully or partially included or reflected in an employ-
22 ee’s opening balance or other transition benefits) shall be
23 disregarded.

24 “(viii) A plan under which the accrued benefit pay-
25 able under the plan upon distribution (or any portion

1 thereof) is expressed as the balance of a hypothetical ac-
2 count maintained for the participant shall not be treated
3 as failing to meet the requirements of clause (i) solely be-
4 cause interest accruing on such balance is taken into ac-
5 count.

6 “(ix) A plan shall not be treated as failing to meet
7 the requirements of this subparagraph solely because the
8 plan provides allowable offsets against those benefits
9 under the plan which are attributable to employer con-
10 tributions, based on benefits which are provided under
11 title II of the Social Security Act, the Railroad Retirement
12 Act of 1974, another plan described in section 401(a) of
13 the Internal Revenue Code of 1986 maintained by the
14 same employer, or under any retirement program for offi-
15 cers or employees of the Federal Government or of the
16 government of any State or political subdivision thereof.
17 For purposes of this clause, allowable offsets based on
18 such benefits consist of offsets equal to all or part of the
19 actual benefit payment amounts, reasonable projections or
20 estimations of such benefit payment amounts, or actuarial
21 equivalents of such actual benefit payment amounts, pro-
22 jections, or estimations (determined on the basis of rea-
23 sonable actuarial assumptions).

24 “(x) A plan shall not be treated as failing to meet
25 the requirements of this subparagraph solely because the

1 plan provides a disparity in contributions or benefits with
2 respect to which the requirements of section 401(l) of the
3 Internal Revenue Code of 1986 are met.

4 “(xi)(I) A plan shall not be treated as failing to meet
5 the requirements of this subparagraph solely because the
6 plan provides for pre-retirement indexing of accrued bene-
7 fits under the plan.

8 “(II) For purposes of this clause, the term ‘pre-re-
9 tirement indexing’ means, in connection with an accrued
10 benefit, the periodic adjustment of the accrued benefit by
11 means of the application of a recognized index or method-
12 ology so as to protect the economic value of the benefit
13 against inflation prior to distribution.”.

14 (2) DETERMINATIONS OF ACCRUED BENEFIT AS
15 BALANCE OF BENEFIT ACCOUNT.—Section 203 of
16 such Act (29 U.S.C. 1053) is amended by adding at
17 the end the following new subsection:

18 “(f)(1) A defined benefit plan under which the ac-
19 crued benefit payable under the plan upon distribution (or
20 any portion thereof) is expressed as the balance of a hypo-
21 thetical account maintained for the participant shall not
22 be treated as failing to meet the requirements of sub-
23 section (a)(2) and section 205(g) solely because of the
24 amount actually made available for such distribution
25 under the terms of the plan, in any case in which the ap-

1 plicable interest rate that would be used under the terms
2 of the plan to project the amount of the participant's ac-
3 count balance to normal retirement age is not greater than
4 a market rate of return.

5 “(2) The Secretary of the Treasury may provide by
6 regulation for rules governing the calculation of a market
7 rate of return for purposes of paragraph (1) and for per-
8 missible methods of crediting interest to the account (in-
9 cluding variable interest rates) resulting in effective rates
10 of return meeting the requirements of paragraph (1).”.

11 (b) **EFFECTIVE DATE.**—The amendments made by
12 this section shall apply to periods beginning on or after
13 June 29, 2005.

14 **TITLE VIII—DEDUCTION**
15 **LIMITATIONS**

16 **SEC. 801.** [*SEE INTRODUCED BILL, PAGE 299, LINE 1 THROUGH*
17 *PAGE 305, LINE 20*].